

IN THE SUPREME COURT OF FLORIDA

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

SC13-1333

INQUIRY CONCERNING A JUDGE No. 12-613

LAURA M. WATSON

Appendix to Judge Watson's Motion for Rehearing

Respectfully submitted,

By: s/Colleen Kathryn O'Loughlin
Florida Bar No. 0042528
COLLEEN KATHRYN O'LOUGHLIN
COLLEEN KATHRYN O'LOUGHLIN, P.A.
1201 N. Federal Hwy #4493
Fort Lauderdale, Florida 33338
colleen@colleenoloughlin.com
(954) 467-5505

Co-counsel for Respondent, The Honorable Laura
M. Watson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via the E-Filing Portal on this 3rd day of July, 2015 to: The Honorable Laura M. Watson, 17th Judicial Circuit, 201 S.E. 6th Street, Room 1005B, Fort Lauderdale, Florida 33301 (Email: jwatson@17th.flcourts.org; ltucker@17th.flcourts.org); Robert A. Sweetapple, Esquire, Sweetapple, Brocker & Varkas, P.I., 20 SE 3rd Street, Boca Raton, Florida 33432 (Email: pleadings@sweetapplelaw.com); Jay S. Spechler, Esquire, Museum Plaza, Suite

900, 200 S. Andrews Ave, Fort Lauderdale, Florida 33301-1964 (Email: jay@jayspechler.com); (Marvin E. Barkin, Esquire, and Lansing C. Scriven, Esquire, Special Counsel for the JQC, Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.A. 101 East Kennedy Boulevard, Suite 2700, Tampa, Florida 33602 (Email: mbarkin@trenam.com; lscriven@trenam.com); Henry M. Coxe, III, Esquire, Bedell, Dittmar, DeVault, Pillans & Coxe, P.A. Attorney for Florida Bar, 101 East Adams Street, Jacksonville, Florida 32202 (Telephone: 904-353-0211; E-Mail: hmc@bedellfirm.com); Lauri Waldman Ross, Esquire, Counsel to the Hearing Panel of the JQC, Ross & Girtten, 9130 South Dadeland Boulevard, Suite 1612, Miami, Florida 33156 (Email: RossGirtten@Laurilaw.com, Susie@Laurilaw.com); Michael L. Schneider, Esquire, General Counsel to the JQC, 1110 Thomasville Road, Tallahassee, Florida 32303 (Email: mschneider@floridajqc.com); David B. Rothman, Esquire, Rothman & Associates, P.A., Special Counsel to the Florida Bar, 200 S. Biscayne Blvd, Suite 2770, Miami, Florida 33313 (Email: dbr@rothmanlawyers.com); Ghenete Wright Muir, Esquire, Bar Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 (Email: gwrightmuir@flabar.org); Alan Anthony Pascal, Esquire, Bar Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 (Email: apascal@flabar.org); Adria Quintela, Esquire, Staff Counsel The

Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 (Email: aquintela@flabar.org).

Pursuant to FJQCR Rule 10(b) a copy is furnished by e-mail to: The Honorable Kerry I. Evander, Chair of the JQC, 300 S. Beach Street, Daytona Beach, Florida 32114 (Email: evanderk@flcourts.org).

By: s/Colleen Kathryn O'Loughlin
Florida Bar No. 0042528

Tab 1

Brief of *Amici Curiae* Dr. Philip Busey, Samuel D. Lopez, Esq., Jay Neal, and Peter Szymanski in Support of Appellant, the Honorable Laura M. Watson
(Hereinafter “*Amici Curiae*” Brief)

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-1333

**INQUIRY CONCERNING A JUDGE No. 12-613
LAURA M. WATSON**

On Review of the Recommendations of the
Hearing Panel, Judicial Qualifications Commission

BRIEF OF *AMICI CURIAE* DR. PHILIP BUSEY, SAMUEL D. LOPEZ, ESQ.,
JAY NEAL, AND PETER SZYMANSKI IN SUPPORT OF APPELLANT, THE
HONORABLE LAURA M. WATSON

J. DENNIS CARD, JR.
Consumer Law Organization, P.A.
FBN: 0487473
2501 Hollywood Boulevard, #100
Hollywood, FL 33020
Telephone: 954-921-9994
dcard@consumerlaworg.com

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INTEREST OF *AMICI CURIAE*

Dr. Philip Busey (hereinafter “Busey”), Samuel D. Lopez (hereinafter “Lopez”), Jay Neal (hereinafter “Neal”), and Peter Szymanski (hereinafter “Szymanski”) (collectively hereinafter “*Amici*”), submit this brief in support of Appellant, the Honorable Laura M. Watson (hereinafter “Judge Watson”). Each of the *Amici* is committed to advancing and protecting Florida voters’ constitutional rights and freedoms of association and to cast votes effectively, and candidates’ rights for public office. They are also committed to ensuring that candidates’ due process rights are protected. However, the Florida Judicial Qualifications Commission (hereinafter “JQC”)’s Recommendations¹ threaten those very precious rights and freedoms.

As detailed in the *Amici Curiae*’s Motion for Leave to File Amici Curiae Brief², (a) Busey, a political aide and consultant, former candidate, elections participant and advocate; and (b) Lopez, a former candidate have experience in, been concerned about, and/or involved with elections, and campaigns, and have been dedicated to protecting the constitutional rights and freedoms of voters, campaign contributors, and candidates for office. In addition, (a) Lopez, a criminal defense attorney, (b) Neal a Juris Doctor, and (c) Szymanski, a former police officer, have

¹Hereinafter, the Findings, Conclusions and Recommendations of the Hearing Panel of the JQC will be referred to as “Recommendations”.)

² The *Amici Curiae* hereby expressly incorporate their facts and argument of their Motion for Leave to File *Amici Curiae* Brief in this Statement.

long been dedicated to the principles of due process guaranteed by the United States' and Florida's Constitutions. Furthermore, all of the *Amici* cast their votes in the subject judicial election.

The proper resolution of this case is a matter of substantial concern to the *Amici*. In addition, it is respectfully submitted that the *Amici's* analysis of the important constitutional questions raised by this appeal may assist this Court in resolving this case.

SUMMARY OF THE ARGUMENT

At stake in this case are the precious, fundamental, constitutional, and intertwined rights and freedoms of Broward County's voters, campaign contributors, and candidates, which are threatened by the JQC's Recommendations of removal of Judge Watson, *after her valid 2012 election*. What lies in the balance are the divestment of 691,025 votes; the waste of \$267,680.31 in hard earned money and an unquantifiable amount of time contributed; and the rights of those who voted and/or contributed in such election [App.³ Tabs 1-6]. The JQC's post-election challenge is arbitrary, capricious, and an "unreasonable restraint on the election process in this state," and an impermissible end-run around the aforementioned rights and freedoms. Treiman v. Malmquist, 342 So.2d 972, 975 (Fla. 1977).

³ Hereinafter, the *Amici Curiae's* Appendix, being simultaneously filed with their Brief, will be abbreviated as "App."

The JQC unleashed its impermissible post-election challenge, on the basis of *allegations* of ethical (non-criminal) violations, *almost immediately after it was determined that Judge Watson won the election*. In an end-run around Broward County's voters' and candidates' rights, the JQC has deprived Judge Watson of due process and the ability to defend the office into which she was voted; thereby negating the rights of her voters' and her opponents' voters to choose their candidate. If successful, the JQC will turn a nonpartisan election into a partisan appointment, and set a new, dangerous, unchecked, and unconstitutional precedent for Florida's governors to "cater" the courts to its party. Furthermore, if successful, the JQC will set new qualification requirements that will chill voters and potential judicial candidates.

The JQC knew of the *allegations* of the Recommendations before the election, but *waited until afterwards to act*, and should be estopped by this Court's equitable duty and Inherent Power to reject the Recommendations.

ARGUMENT

I. This Honorable Court Has the Duty and Authority to Protect the Voters' and Candidates' Rights, and Doing So is Consistent with Constitutional Requirements

This Honorable Court has the duty and authority to protect the voters' and candidates' rights, and doing so is consistent with constitutional requirements.

The JQC's Recommendations for Judge Watson's *alleged* violations, on the

basis of *allegations* of ethical (non-criminal) violations of Florida Bar Rules of Professional Conduct, which *allegedly* occurred eight to ten (8-10) years before she announced her candidacy, constitute an impermissible post-election challenge of her judicial race, which could divest 691,025 Broward County Voters of their constitutional voting rights, cast votes, and/or contributions [App. Tabs 1-6].

This Court has the Inherent Power and duty to protect Broward's voters and candidates of their constitutional rights by rejecting the Recommendations.

A. Floridians' Voters' and Candidates' Rights are Constitutionally Protected, and the JQC Cannot Make an End-Run Around Them

Floridians' voters and candidates' rights are constitutionally protected, and the JQC cannot make an end-run around them.

Voters' rights and judicial candidate eligibility are inextricably intertwined, governed by the US. Constitution and/or Florida's Constitution, and embody fundamental rights and freedoms. *See* U.S. Const. amend. I, and XIV, and Fla. Const. art. V, §20, and VI, §2. As explained by the Supreme Court:

‘the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters’...

...The impact of candidate eligibility requirements on voters implicates basic constitutional rights. Writing for a unanimous Court in *NAACP v. Alabama*, 357 U.S. 449, 460, 78 S.Ct. 1163, 1170, 2 L.Ed. 2d 1488 (1958), Justice Harlan stated that it ‘is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces

freedom of speech’...

...voters can assert their preference only through candidates or parties or both...the exclusion of candidates also burdens voters’ freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying-point for like-minded citizens.

Anderson v. Celebreeze, 460 U.S. 780, 786-787, 103 S. Ct. 1564, 75 L.Ed.2d 547 (1983) (Internal citation and footnote omitted). Voters’ rights are protected by the First and Fourteenth Amendments to the U.S. Constitution. See Ray v. Mortham, 742 So.2d 1276, 1285 (Fla. 1999). “The declaration of rights expressly states that ‘all political power is inherent in the people.’” Treiman, *citing* Fla. Const. art. 1, §1. Treiman at 975. “[T]he right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively” “rank among our most precious freedoms.” Anderson at 767.

“‘[E]ligibility’ for state office is determined solely by the constitutional requirements for holding the state office sought.” Norman v. Ambler, 46 So.3d 178, 182 (Fla. 1st DCA 2010), *citing* Levey v. Dijols, 990 So. 2d 688 (Fla. 4th DCA 2008). Eligibility to run for Florida judicial offices is controlled by Fla. Const. art. V, §20, §8. Furthermore, “[n]o statute can add to or take from the qualifications set forth in the Constitution.” Id. at 183 (Citations omitted).

“The right of the people to select their own officer is their sovereign right, and

the rule is against imposing unnecessary and unreasonable disqualifications to run.” Treiman at 975 (Citations omitted.) As explained by this Court:

‘The lexicon of democracy condemns all attempts to restrict one’s right to run for office’...

Unreasonable or unnecessary restraints on the elective process are prohibited.

Fundamental to our system of government is the principal that the right for public office is a valuable one and no one should be denied this right unless the Constitution or an applicable valid law expressly declares him to be ineligible...

‘Discouragement of candidacy for public office should be frowned upon in the absence of express statutory disqualification. The people should have available opportunity to select their public officer from a multiple choice of candidates. Widening the field of candidates is the rule, not the exception in Florida.’

Id. (Citations omitted.) Any “doubts about the qualifications of a political candidate” are to be resolved in favor of the candidate. *See Ruiz v. Farias*, 43 So.3d 124, 127 (Fla. 3d DCA 2010)(Citations omitted). Thereby, voters’ and candidates’ rights should only be denied if the “Constitution or an applicable valid law *expressly* declares [a candidate] to be ineligible.” Treiman at 975.

The JQC has relentlessly, and without any semblance of due process, tried to overturn a hotly contested election wherein the Broward Voters decided that Judge Watson, a *valid candidate*⁴, should be Circuit Court Judge, *almost immediately*

⁴It is undisputed that since Judge Watson announced her candidacy she has met all of the eligibility requirements set forth in Fla. Const. art. V, § 8. She is a qualified

*after the results of the election were certified*⁵, on the basis of *allegations* of ethical (non-criminal) violations that were thoroughly publicly debated during her campaign. Judge Crow's 2008 Final Judgment and/or the Florida Bar (hereinafter "Bar")'s Complaint's⁶ *allegations*, which are the subject of the Recommendations, were public knowledge, *widely aired* on television, and extensively written about in newspapers, and blogs during such judicial race⁷. After a thorough public vetting of Judge Watson and those *allegations*, she won the election. Almost immediately after half a million Broward Voters had spoken, the JQC charged Judge Watson with *allegations* of pre-judicial ethical (non-criminal) violations, that *allegedly* occurred approximately eight to ten (8-10) years before she announced her candidacy for judge.

The JQC's attempts to have Judge Watson removed, almost immediately

voter of Florida; resides in the Seventeenth Judicial Circuit; is under the age of seventy (70); was a member of the Florida Bar for more than five (5) years before her announcement of her candidacy and election; and is a member in good standing in the Florida Bar. *See* Fla. Const. art. V, § 8.

⁵There was no protest to the election filed by either candidate or a qualified elector.

⁶Although, as detailed in Judge Watson's Principal Brief in Opposition to the Recommendations (hereinafter "Principal Brief"), the JQC, citing confidentiality, withheld many documents, including emails, from Judge Watson, and failed to produce a privilege log, it is known that the Bar case against Judge Watson was referred to a grievance committee on or before June 5, 2013, and such committee found probable cause on October 19, 2012. *See* Bar Motion to Intervene pg. 3 ¶6 and Recommendations pg. 3.

⁷ *See, e.g. BrowardBeat.com*, "Four with Campaign Baggage Run for Judge," May 3, 2012 ("Two firms thought they deserved more money from the settlement and sued three firms that got the bulk of the money, including Watson's firm.") [App. Tab 7]

after she was sworn in as a constitutional officer, is nothing short of an attempt to do an end-run around the rights and will of Broward voters and candidates, which cannot be allowed. As explained by this Court:

There are two truisms about Florida's election law concerning judicial races. One, eligibility to run for office is controlled by Art. V, section 8 of the Florida Constitution. Any statute that restricts eligibility beyond the requirements of the Florida Constitution is invalid...

And two, extreme care must be given to post-election challenges to avoid disenfranchising Florida's voters. '[B]arring fraud, unfairness, disenfranchisement of voters, etc. it is too late to attack the validity of an election after the people have voted.'

Levey v. Dijolis, 990 So.2d 688, 692 (Fla. 2008) (Internal Citations omitted.)

The JQC's impermissible "stratagem is to accomplish an end-run around the sovereign right of [691,025 of the] people to select their own" Circuit Court Judge, and the candidate's right to office, and this Court should put an end to it. Ruiz at 127. [App. Tabs 1-2].

B. The JQC Has Engaged in An Impermissible Post-Election Challenge of Judge Watson's Judicial Race

The JQC has engaged in an impermissible post-election challenge of Judge Watson's Judicial Race, and is effectively seeking this Court to determine such challenge.

There is no inherent power in Florida courts to determine election contests, and they may only do so with "clear statutory warrant." Norman at 181. At

common law, Florida election contests were limited to petitions of quo warranto since “there was no right to contest in court any public election, because such a contest is political in nature and therefore outside the judicial power.” Id. (Citations omitted.) In Florida, the statutory right to assert post-election contests is strictly conferred and constrained through Fla. Stat. §102.168, which is available to unsuccessful candidates and qualified electors, and as mentioned *supra* did not occur here. Id. and Levey at 693.

The JQC had a number of available remedies to challenge whether Judge Watson met the qualifications for judicial office, and to “seek removal of [her] name from the ballot BEFORE the election [was] held,” and she won it. Levey at 694. (Citations omitted).⁸ The JQC has jurisdiction over candidates and judges, and, as detailed *infra*, asserts that it has jurisdiction over any judge’s prejudicial conduct after 1966, even without any *alleged* judicial misconduct. The JQC

⁸The cases cited by Levey brought pre-election actions seeking the following remedies: *declaratory relief* (See Miller v. Mendez, 804 So. 2d 1243, 1244 (Fla. 2001); Schurr v. Sanchez-Gronlier, 937 So. 2d 1166 (Fla. 3d DCA 2006); Miller v. Gross, 788 So. 2d 256, 257 (Fla. 4th DCA 2000); Smith v. Crawford, 645 So. 2d 513, 517 (Fla. 1st DCA 1994); Marina v. Leahy, 578 So. 2d 382, 383 (Fla. 3d DCA 1991); McClung v. McCauley, 238 So. 2d 667, 688 (Fla. 4th DCA 1970); White v. Stargel, 2006 WL 5509526 (Fla. 2nd Cir. Ct. 2006); *injunctive relief* (See Mendez at 1244; Schurr at 1166; Smith at 517; McClung at 668; White; and *writ of mandamus* (See White; Siegenderf v. Stone, 266 So. 2d 345 (Fla. 1972); State ex rel. Haft v. Adams, 238 So. 2d 843 (Fla. 1970); Eastmore v. Stone, 265 So. 2d 517 (Fla. 1st DCA 1972); State ex rel. Cherry v. Stone, 265 So. 2d 56 (Fla. 1st DCA 1972))

should have filed a (a) petition for quo warranto⁹; (b) declaratory action; (c) injunctive relief action; and/or (d) petition for writ of mandamus *after Judge Watson qualified, but BEFORE she won the election*. Furthermore, the JQC has the authority to act *before the results of an election* if a candidate's qualifications are in question. See Norman at 181-182. See also Levey at 694. Since, as detailed *supra*, the subject *allegations* of the Recommendations were certainly known to the JQC before the qualifying period for the November 2012 election and/or at the latest during the hotly debated campaigns for such election, the JQC abused its office by waiting until, *after the voters cast their votes*, to seek her removal.

C. The JQC's New Qualification Requirements Exceed Their Authority, and Chill Voters and Potential Judicial Candidates

As detailed in the Principal Brief¹⁰, during the proceedings, the JQC ruled that, pursuant to Florida's Constitution, it has the jurisdiction to investigate any justice or judge for any *alleged* or perceived, pre-judicial misconduct from 1966 forward, including youthful indiscretions, so long as the JQC believes such conduct demonstrates a present unfitness to serve as a judge. Such ruling allows the JQC members to (a) effectively place new qualification requirements on judicial

⁹ Florida's Constitution authorizes this Court to issue writs of quo warranto to "state officers" and "state agencies" to challenge the right of an individual to hold a public office. See Fla. Const. art. V § 3(b) (8); State ex rel. Booth v. Byington, 168 So.2d 164, 175 (Fla. 1st DCA 1964).

¹⁰ Hereinafter, portions of, and/or facts or issues in the Principal Brief, which are cited to herein, are expressly incorporated herein.

candidates; (b) violate the Florida Constitution; and (c) allow the JQC to be the final arbiter of judicial elections and appointments; thereby superseding the voters' and candidates' rights, and authority of the Governor and/or Florida's Constitution. "New and onerous requirements for officeholding[, such as those provided by such ruling¹¹,] may be considered the equivalent of an ouster from office." See Myers v. Hawkins, 362 So.2d 926, 935 (Fla. 1978) (Citations omitted).

If this Court sustains the JQC's aforementioned ruling, no voter could ever be certain that they had, *in fact*, been entitled to vote for *a qualified candidate of their choice* because ultimately the JQC could, *after the election*, sua sponte investigate their candidate for prejudicial conduct going back to 1966, even without any *alleged* judicial misconduct, in order to overturn the will of Florida's voters. For the same reasoning, no potential candidate could know if they were, *in fact*, a **qualified candidate**. Allowing such ruling to stand will create a chilling effect upon Florida's voters and/or potential judicial candidates.

D. The JQC's Impermissible Judicial Race End-Run Will Divest the 691,025 Broward Voters of Their Voting Rights and Votes Cast

¹¹An election campaign is an expensive and time consuming necessity of holding public office, as *Amici*, Busey, and Lopez, know from experience. Adding to those costs, as detailed in the Principal Brief, the expense of mounting a defense to JQC actions, *let alone* baseless ones, can be insurmountably high, and force many judges to throw in the towel even when there has been no misconduct.

If the JQC’s Judicial End-Run is successful in removing Judge Watson, it will divest all of the 691,025 votes cast in the Judge Watson Judicial election [App. Tabs 1-2]. *First*, the 327,287 Broward County voters who voted for Judge Watson will be divested of their voting rights and winning votes because *not only* will they lose their chosen candidate, *but also* a new one will be appointed without their consent and votes. *Second*, the 363,738 Broward County voters who voted for Judge Watson’s opponents¹² will be divested of their voting rights and votes cast because *not only* did their candidate lose, *but also* a new one will be appointed without their consent and vote. A removal will wrongfully disenfranchise the *Amici*, and the other 691,021 voters in such election.

E. The JQC’s Impermissible Judicial Race End-Run Unfairly Deprives Judge Watson’s Voters of Their Chosen Candidate by Denying Her Due Process to Defend The Office Into Which They Voted Her

The JQC’s impermissible judicial race end-run unfairly deprives Judge Watson’s voters of their chosen candidate by denying her due process to defend the office into which they voter her.

As detailed in the Principal Brief, Judge Watson was denied due process in these proceedings. She was denied her due process by the JQC’s (a) *failure to follow its own rules, some of which are not published, properly adopted and/or*

¹²In the elections for this Circuit Court seat, 323,618 Broward County voters voted for Julio E. Gonzalez (hereinafter “Gonzalez”); (b) 23,928 Broward County voters voted for Rhoda Sokoloff (hereinafter “Sokoloff”); and (c) 16,192 Broward County voters voted for Oliver Parker.

constitutional; (b) failure to follow Florida’s Code of Judicial Conduct, Rules of Civil Procedure, and/or Evidence Code; (c) unconstitutional interpretation of Fla. Const., art. V, §12, that results in a de facto “statute of limitations” period, which goes back to 1966, and is the conduit for its impermissible post-election challenge; (d) failure to provide her with notice and an opportunity to be heard on all issues; (e) failure to provide her with all documents responsive to her discovery requests, and a privilege log for documents withheld; and (f) its improper interference with depositions. Furthermore, Judge Watson was also denied any review of her denied disqualification motions prior to the issuance of the Recommendations, which constitutes an irremediable denial of due process. By denying Judge Watson due process, the JQC and these proceedings *not only* divest her voters of their votes, time, and money, *but also* due process.

Since, as detailed *supra*, voters and candidates’ rights are intertwined, the denial of Judge Watson’s due process rights and ability to defend the office into which she was voted, unfairly deprives her voters of their chosen candidate, votes, time and money, and needlessly wastes those of her opponents and their voters.

F. If Successful, the JQC Will Turn a Nonpartisan Election into a Partisan Appointment, Which is an Unconstitutional and Unchecked Scenario Capable of Repetition

If successful, the JQC will turn a nonpartisan judicial election into a partisan

appointment, which is an unconstitutional and unchecked¹³ scenario capable of repetition, which should be equally repugnant to all voters, judicial candidates, and political parties. Judicial elections are supposed to be nonpartisan. However, it is common knowledge that, after elected, Florida governors wield their strong powers to appoint JNC members, Florida Board of Governor (hereinafter “FL Bar Gov”) members, and judicial appointees reflective of their party. This appointment power leads to partisan alliances between (a) Florida’s governors; (b) JNC members appointed by Florida’s governors; (c) judges nominated by JNC members and appointed by Florida’s governors¹⁴; (d) fourteen (14) of seventeen (17) members of FL Bar Gov appointed by Florida’s governors; and (e) JQC members chosen by Florida’s governors, and judges¹⁵. For example, as detailed in Judge Watson’s 9-16-13 Motion to Dismiss for Lack of Subject Matter Jurisdiction, there are far less than six (6) degrees of separation between the Bar, JQC, JNC, and/or our current

¹³ As detailed in this Court’s own website, the JQC is an “independent agency” “operates under rules it establishes for itself,” and Florida’s governors and/or legislature have the only power to remove JQC members.

¹⁴For instance, our current governor has appointed one hundred and nine (109) judges, not to mention many JNC members.

¹⁵The fifteen (15) members of the JQC are composed of the following: five (5) non-lawyers chosen by Florida’s governors; two (2) DCA judges chosen by the DCA judges; two (2) circuit judges chosen by the circuit court judges; two (2) county court judges chosen by the county court judges; and four (4) registered voter/lawyers chosen by FL Bar Gov.

governor.¹⁶ The JQC, with its impartial composition, and new found ability to engage in post-election challenges to the lawfully elected judicial candidates of the people's choice¹⁷ can clear the way for Florida's presiding governors to stack Florida's courts with members of their party. The conversion of a valid nonpartisan election into a partisan appointment rises to an outrageous form of partisan politics, political perversion, judicial partiality, and denial of the fundamental voters' rights of freedom of association and to cast votes effectively for the candidates and parties of their choice.

G. The JQC's Impermissible Judicial Race End-Run Unfairly Taxes, and/or Penalizes the Candidates and/or Their Contributors

The JQC's impermissible judicial race end-run unfairly taxes and/or penalizes

¹⁶ As detailed in such motion (pg. 5, 24-25), United Auto Ins. Co., which was regularly sued by Judge Watson, contributed \$15,000 to Gonzalez through a PAC. See BrowardBeat.com, Julio Gonzalez's "Last Minute Shady Campaign," November 3, 2012 [App. Tab 8]. Colodny Fass Talenfeld, & Abbate represented United Auto Ins. Co., and its associate sat on the grievance Committee that made the Bar's probable cause determination against Judge Watson. JQC Special Counsel Miles McGrane III and Searcy Denney Scarola Barnhart & Shipley (hereinafter "Searcy") co-counseled several appeals. JQC Hearing Panel Member Mayanne Downs is a shareholder in GrayRobinson. Both GrayRobinson and Searcy have members on the JNC for this circuit. Furthermore, GrayRobinson lists Progressive as one of its clients, and Progressive paid the subject settlement of the Recommendations.

¹⁷ As detailed in the Principal Brief, the JQC has not investigated and charged a candidate or judge for *allegations* of their conduct that occurred years before their candidacy was announced, *let alone even contemplated*, until now.

the candidates and/or their financial contributors by seeking to void the election and their contributions by removal¹⁸. If successful, the JQC will *not only* void 691,025 votes, *but also* waste the hard earned money and hard work of the candidates and their supporters that went into four (4) candidates' campaigns: \$113,385 (Judge Watson); \$105,080 (Gonzalez); \$19,214.75 (Sokoloff); \$30,000 (Parker) [App. Tabs 1-6]. A removal will waste \$267,680.31 of hard earned money.

H. The JQC Should be Estopped from Seeking the Removal of Judge Watson, a Victorious Candidate, Where It Was Aware, Before the Election, of the *Allegations* of Her 2002-2004 Pre-Candidacy Conduct

The JQC¹⁹ should be estopped from seeking the removal of Judge Watson, after the election she won where it was aware, *before the elections*, of the *allegations* of her 2002-2004 pre-candidacy conduct. As this Court observed in Winterfield v. Town of Palm Beach, 455 So. 2d 359 (Fla. 1984) (Citation omitted):

In preserving elections in the face of post-election challenges to pre-election irregularities, this Court has found that a party is estopped from voiding an election where he was on notice of the irregularity before the election. 'The aggrieved party cannot await the outcome of

¹⁸An average Broward County campaign costs \$100,000 or more.

¹⁹The Bar was riding on the JQC's coattails for a disbarment, but its intervention was denied. *Assuming arguendo* that the Bar had been allowed to intervene, it too should be estopped because it too knew of the *allegations* of Judge Watson's 2002-2004 pre-candidacy conduct, *before the election*. In 2008, the Bar initiated grievance proceedings against Judge Watson before she became a judge; the Bar *allegedly* deferred their proceedings until after an appeal was decided on February 29, 2012; and Judge Watson's candidacy became public on or about April 17, 2012. *See* Bar Motion to Intervene pg. 1-3.

the election and then assail preceding deficiencies which he might have complained of to the proper authorities before the election.'

This Court should find the JQC estopped from now trying to void an election where (a) it knew of the aforementioned pre-candidacy *allegations, before the elections and throughout Judge Watson's highly contested and publicized campaign*, and, (b) as detailed *supra*, the candidates, 691,025 voters, and financial contributors relied on the fact that Judge Watson was a qualified candidate and no challenge had made been made to her candidacy when they made the aforementioned contributions, and cast their votes.

I. This Court Has the Equitable Duty and/or Inherent Power to Protect Florida's Voters' and Candidates' Constitutional Rights

This Court has the equitable duty to protect the 691,025 voters' and/or four (4) candidates' constitutional rights, votes, time, and money, in the subject judicial race by rejecting the Recommendations with its broad Inherent Powers, which **"can be 'invoked even if procedural rules exist,'" which address the same conduct, and are not limited to the court's sanctioning powers.** Peer v. Lewis, 606 F.3d 1306, 1315 (11th Cir. 2010), *citing* Glatter v. Mroz (In re Mroz), 65 F.3d 1567, 1575 (11th Cir. 1995) (Emphasis added.) As explained by this Court:

[e]very court has inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction, subject to valid existing laws and constitutional provisions.

Vitakis-Valchine v. Valchine, 793 So. 2d 1094, 1099 (Fla. 4th DCA 2001)

(Citations Omitted.) Accordingly, this Court should protect the Broward County voters' and candidate's constitutional rights by rejecting the Recommendations.

CONCLUSION

The JQC's impermissible post-election challenge threatens voters' and candidates' constitutional rights without affording Judge Watson a scintilla of due process, which is the cornerstone of our Constitution and judicial system:

No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.”

Magna Carta, Ch. 20. Furthermore, the JQC is railroading Judge Watson for pre-candidate conduct that does not amount to a violation of the then-existing law.²⁰

“A fundamental principle of our democracy is, in Hamilton’s words, ‘that the people should choose whom they please to govern them,’” and in James Madison’s words, that principle is “undermined by limiting whom the people can select”. *See Powell v. McCormack*, 395 U.S. 486, 547 (1969) (Citations omitted).

Echoing James Madison’s warning, allowing the JQC to shape its own judicial qualifications and launch post-election challenges will lead to an improper, unchecked, and dangerous recipe of partisan removals and appointments that can be wielded by any party to stack the courts with members of its party. *Id.*

²⁰It is traveling under 2006 rules for 2002-2004 *non-criminal allegations*.

This Honorable Court should reject the Recommendations. To do otherwise, will erode the will and rights of the people, which are in the cross- hairs.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via the E-Filing Portal by e-mail on this 2ND day of July, 2014 to: Marvin E. Barkin, Esquire, and Lansing C. Scriven, Esquire, Special Counsel for the JQC, Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.A. 101 East Kennedy Boulevard, Suite 2700, Tampa, Florida 33602 (Email: mbarkin@trenam.com; lscriven@trenam.com); Lauri Waldman Ross, Esquire, Counsel to the Hearing Panel of the JQC, Ross & Girtten, 9130 South Dadeland Boulevard, Suite 1612, Miami, Florida 33156 (Email: RossGirtten@Laurilaw.com, Susie@Laurilaw.com); Michael L. Schneider, Esquire, General Counsel to the JQC, 1110 Thomasville Road, Tallahassee, Florida 32303 (Email: mschneider@floridajqc.com); David B. Rothman, Esquire, Rothman & Associates, P.A., Special Counsel to the Florida Bar, 200 S. Biscayne Blvd, Suite 2770, Miami, Florida 33313 (Email: dbr@rothmanlawyers.com); Ghenette Wright Muir, Esquire, Bar Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 (Email: gwrightmuir@flabar.org); Alan Anthony Pascal, Esquire, Bar Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 (Email: apascal@flabar.org); Adria Quintela, Esquire, Staff Counsel The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 (Email: aquintela@flabar.org).

Pursuant to FJQCR Rule 10(b) a copy is furnished by e-mail to: The Honorable Kerry I. Evander, Chair of the JQC, 300 S. Beach Street, Daytona Beach, Florida 32114 (Email: evanderk@flcourts.org).

By: /s/ J. Dennis Card, Jr.
J. DENNIS CARD, JR.
FBN: 0487473
Consumer Law Organization, P.A.
2501 Hollywood Boulevard, #100
Hollywood, FL 33020
954-921-9994 (Phone)
954-963-1758 (Facsimile)
dcard@consumerlaworg.com

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this computer-generated brief complies with the font requirements of Fla. R. App. 9.210(a)(2), as it is being submitted in Times New Roman 14-point font.

By: /s/ J. Dennis Card, Jr.
J. DENNIS CARD, JR

Tab 2

Rules of the Supreme Court Relating to Admissions to the Bar

RULES OF THE SUPREME COURT RELATING TO ADMISSIONS TO THE BAR

As amended by order dated June 4, 2015

RULE 1 GENERAL

1-10 Authority and Mission.

1-11 Introduction. The admission of attorneys to the practice of the profession of law is a judicial function.

1-12 Rules. The Rules of the Supreme Court Relating to Admissions to the Bar are reviewed, approved, and promulgated by the Supreme Court of Florida. Modifications to the rules require the filing of a petition with the Supreme Court of Florida and subsequent order by the court.

1-12.1 Deadlines on Weekend or Holiday. If a deadline described in these rules falls on a Saturday, Sunday, or holiday, then the deadline will be extended until the end of the next business day.

1-13 Florida Board of Bar Examiners. The Florida Board of Bar Examiners is an administrative agency of the Supreme Court of Florida created by the court to implement the rules relating to bar admission.

1-14 Background Investigations.

1-14.1 Purpose. The primary purposes of the character and fitness investigation before admission to The Florida Bar are to protect the public and safeguard the judicial system.

1-14.2 Responsibility. The board must ensure that each applicant has met the requirements of the rules with regard to character and fitness, education, and technical competence prior to recommending an applicant for admission.

1-15 Bar Examination.

1-15.1 Purpose. The primary purpose of the bar examination is to ensure that all who are admitted to The Florida Bar have demonstrated minimum technical competence.

1-15.2 Responsibility. The board is responsible for preparing, administering, and grading written examinations. Board members must be willing and available to discuss with applicants the purposes, policies, and procedures of the admissions process.

1-16 Admission Recommendations. Following each of its meetings, the board will recommend the admission of every applicant who has complied with all the requirements of the applicable rules, who has attained passing scores on the examination, and who has demonstrated the requisite character and fitness for admission.

1-20 Florida Board of Bar Examiners.

1-21 Membership. The Florida Board of Bar Examiners consists of 12 members of The Florida Bar and 3 public members who are not lawyers.

1-21.1 Additional Members. The board may submit to the court a request for additional members to serve, as necessary. The request and appointee recommendations must be submitted in the same manner as appointee recommendations under rules 1-22.2 and 1-23.2. The term of service of a member appointed under this rule will be as provided in rules 1-22.3 and 1-23.3 or as otherwise approved by the court.

1-22 Attorney Members.

1-22.1 Qualifications. Attorney members must be practicing attorneys with scholarly attainments and an affirmative interest in legal education and the requirements for admission to the bar. Attorney members must

an affirmative interest in legal education and the requirements for admission to the bar. Attorney members must have been members of The Florida Bar for at least 5 years.

1-22.2 Appointments. The Florida Bar Board of Governors must submit to the court not less than 90 days before the expiration of the term of any attorney member of the board, or within 90 days of a vacancy, a group of 3 recommended appointees.

1-22.3 Term of Service. Appointments will be for no more than 5 years and the term of all appointments will extend to October 31 of the last year of the term. Any vacancy occurring during a term must be filled by appointment. No attorney appointed by the court as a result of a vacancy occurring during a term will be appointed for more than 5 years.

1-23 Public Members.

1-23.1 Qualifications. Public members must not be lawyers and must have an academic bachelor's degree. It is desirable that public members possess educational or work-related experience of value to the board such as educational testing, accounting, statistical analysis, medicine, psychology, or related sciences.

1-23.2 Appointments. A joint committee composed of 3 members of the board and 3 members of The Florida Bar Board of Governors must submit to the court not less than 90 days before the expiration of the term of any public member of the board, or within 90 days of a vacancy, a group of 3 recommended appointees.

1-23.3 Term of Service. Appointments will be for no more than 3 years and the term of all appointments will extend to October 31 of the last year of the term. Any vacancy occurring during a term must be filled by appointment. No public member appointed by the court as a result of a vacancy occurring during a term will be appointed for more than 3 years.

1-24 Board Members Emeritus.

1-24.1 Eligibility. A former member of the board may accept the designation of board member emeritus, if eligible under rule 1-34 ([/_85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/1a6b2db4bf13be6485257c400073a6fc?Redirect](#)).

1-24.2 Purpose. To assist the board in fulfilling its investigative and adjudicative functions, a board member emeritus is authorized to participate as a member of an investigative or formal hearing panel as provided by rule 3-22 ([/_85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/729778e9181b426785257c590059b4d6?Redirect](#)) and 3-23.2 ([/_85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/ae874582c7560c6a85257c59005a959c?Redirect](#)). The formal hearing panel must consist of a majority of current members of the board. At least 1 member of an investigative hearing panel must be a current member of the board. All recommendations of investigative hearing panels must be approved by a quorum of the current board.

1-25 Officers.

1-25.1 Vice Chair. During the board meeting preceding November 1 of each year, the board must designate a vice chair who will hold office for a period of 1 year beginning on November 1. The designation will be determined by majority vote. In the event of an irreconcilable tie vote, the matter will be certified to the Supreme Court of Florida, and the court will designate the vice chair for the next year.

1-25.2 Chair. On November 1 of each succeeding year, the previously elected vice chair will become chair for a period of 1 year.

1-27 Office Location. The office of the board will be maintained in Tallahassee, Florida.

1-30 Board Member Responsibilities.

1-31 Tenure. A board member should be appointed for a fixed term but should be eligible for reappointment if the board member's work is of high quality. Members of the board should be appointed for staggered terms to ensure continuity of policy but with sufficient rotation to bring new views to the board and to ensure continuing interest in its work.

1-32 Devotion to Duty. A board member should be willing and able to devote whatever time is necessary to perform the duties of a board member.

1-33 Essential Conduct. A board member should be conscientious, studious, thorough, and diligent in learning the methods, problems, and progress of legal education, in preparing bar examinations, and in seeking to improve the examination, its administration, and requirements for admission to the bar. Each board member should be just and impartial in recommending the admission of applicants and should exhibit courage, judgment, and moral stamina in refusing to recommend applicants who lack adequate general and professional preparation or who lack good moral character.

1-34 Board Influences, Conflicting Duties, and Obligations. Board members should not have adverse interests, conflicting duties, inconsistent obligations, or improper considerations that will in any way interfere or appear to interfere with the proper administration of their functions. A member of the board or a board member emeritus may not serve as a judge of any court; a regular or adjunct professor of law; an instructor, advisor or in any capacity related to a bar review course, or in other activities involved with preparation of applicants for bar admission; or as a member of the governing or other policy-making board or committee of a law school or the university of which it is a part. A board member is not prohibited from service on the board or as an officer of alumni groups that support law schools or universities or from assisting them with fund raising activities.

1-35 Compensation. Board members will serve without compensation, but will be reimbursed for reasonable travel and subsistence expenses incurred in the performance of their services for the board.

1-40 Board Meetings.

1-41 Conducting Board Meetings. The board will meet in formal session throughout the State of Florida on a regularly scheduled basis to consider administrative, applicant, and registrant matters and to conduct investigative and formal hearings. Subject to the approval of the board, the place and time of meetings will be determined by the chair of the board.

1-42 Special Hearing Panels. Hearings may also be conducted by special hearing panels of the board convened at other times and places fixed by the board.

1-43 Telephone Conference Meetings. On reasonable notice, the chair of the board may conduct a meeting of the board by conference telephone call for routine administrative action or for emergency action.

1-50 Fiscal Authority.

1-51 Budget. The board will annually prepare a budget and submit it to the Supreme Court of Florida for approval.

1-51.1 Income. Subject to the approval of the court, the board may classify applicants and registrants, and fix the charges, fees, and expenses that will be paid by each.

1-51.2 Expenses. The board will make such disbursements as are required to pay the necessary expenses of the board.

1-52 Audit. The board will have an annual audit conducted by a certified public accountant. The annual audit must be filed with the Clerk of the Supreme Court of Florida.

1-53 Staffing. The board will employ an executive director and other assistants as it may deem necessary. It will provide for the compensation of employees and will pay expenses incurred in the performance of their official duties. All employees must be bonded as may be directed by the board.

1-60 Confidentiality.

1-61 Confidentiality. All information maintained by the board in the discharge of the responsibilities delegated to it by the Supreme Court of Florida is confidential, except as provided by these rules or otherwise authorized by the court.

1-62 Custodian of Records. All records including, but not limited to, registrant and applicant files, investigative reports, examination materials, and interoffice memoranda are the property of the Supreme Court of Florida, and the board will serve as custodian of all the records.

1-63 Release of Information. The board is authorized to disclose information relating to an individual registrant, applicant, or member of The Florida Bar, absent specific instructions from the court, in the following situations only.

1-63.1 Public Request. On request, the staff will confirm if a person has filed a Registrant Bar Application, Examination Application, or Bar Application with the board, and will provide the date of admission of any attorney admitted to The Florida Bar.

1-63.2 National Data Bank. The name, date of birth, Social Security number, and date of application will be provided for placement in a national data bank operated by, or on behalf of, the National Conference of Bar Examiners.

1-63.3 The Florida Bar. On written request from The Florida Bar for information relating to disciplinary proceedings, reinstatement proceedings, or unlicensed practice of law investigations, information will be provided with the exception of any information received by the board under the specific agreement of confidentiality or otherwise restricted by law.

1-63.4 National Conference of Bar Examiners or Foreign Bar Admitting Agency. On written request from the National Conference of Bar Examiners, or from foreign bar admitting agencies, foreign bar associations, or other similar agencies, when accompanied by an authorization and release executed by the person about whom information is sought, information will be provided with the exception of any information received by the board under a specific agreement of confidentiality or otherwise restricted by law.

1-63.5 Documents Filed by Registrant or Applicant. On written request from registrants or applicants for copies of documents previously filed by them, and copies of any documents or exhibits formally introduced into the record at an investigative or formal hearing before the board, and the transcript of hearings, copies will be provided. Costs of copies are set out below:

- a. The fee for a copy of any document or portion of a document is \$25 for the first page and 50 cents for each additional page.
- b. The fee for a copy of the Bar Application or Registrant Bar Application is \$50.

1-63.6 Documents Filed on Behalf of the Registrant or Applicant. On written request from registrants or applicants, copies of documents filed on their behalf, or at the request of the board with the written consent of the party submitting the documents, will be provided. If the documents would be independently available to the requesting registrant or applicant, then consent of the party submitting the documents will be deemed waived. The fees for requested copies are \$25 for the first page and 50 cents for each additional page.

1-63.7 Grand Jury or Florida State Attorney. On service of a subpoena issued by a Federal or Florida grand jury, or Florida state attorney, in connection with a felony investigation only, information will be provided with the exception of any information that is otherwise restricted by law.

1-63.8 Third Parties. The board may divulge the following information to all sources contacted during the background investigation:

- a. name of applicant or registrant;
- b. former names;
- c. date of birth;
- d. current address; and
- e. Social Security number.

1-63.9 List of Candidates. Following the board's recommendation under rule 5-10 ([/_85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/8c9eacb95c13060b85257c0b0059b910?Redirect](https://www.flcourts.org/redirect?url=/_85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/8c9eacb95c13060b85257c0b0059b910?Redirect)) and the court's approval for an applicant's admission to The Florida Bar, the applicant's name and mailing address is public information.

1-64 Breach of Confidentiality. Whenever any person intentionally and without authority discloses confidential information maintained by the board, the person may be in contempt of the board. The board must report to the Supreme Court of Florida the fact that the person is in contempt of the board for proceedings against the person as

the court may deem advisable.

1-65 Disclosure of Information. Unless otherwise ordered by the Supreme Court of Florida, the chair of the board, or the presiding officer at a hearing before the board, nothing in these rules prohibits any applicant or witness from disclosing the existence or nature of any proceeding under rule 3 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/57f1215b09ea865985257c0b0059922e?Redirect](https://www.flsba.org/85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/57f1215b09ea865985257c0b0059922e?Redirect)), or from disclosing any documents or correspondence served on, submitted by, or provided to the applicant or witness.

1-70 Immunity and Privilege.

1-71 Board and Employee Civil Immunity. The board and its members, employees, and agents are immune from all civil liability for damages for conduct and communications occurring in the performance and within the scope of their official duties relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law.

1-72 Immunity and Privilege for Information. Records, statements of opinion, and other information regarding an applicant for admission to The Florida Bar, communicated without malice to the board, its members, employees, or agents by any entity, including any person, firm, or institution, are privileged, and civil suits for damages predicated on those communications may not be instituted.

RULE 2 APPLICATION REQUIREMENTS

2-10 Application Qualifications. To seek admission to The Florida Bar, a person must meet the qualifications, file the appropriate applications and fees as set out in this rule, and comply with rules 3 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/57f1215b09ea865985257c0b0059922e?Redirect](https://www.flsba.org/85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/57f1215b09ea865985257c0b0059922e?Redirect)) and 4 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/51f08918061afec385257c0b00599d19?Redirect](https://www.flsba.org/85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/51f08918061afec385257c0b00599d19?Redirect)).

2-12 Proof of Character and Fitness. All applicants seeking admission to The Florida Bar must produce satisfactory evidence of good moral character, an adequate knowledge of the standards and ideals of the profession, and proof that the applicant is otherwise fit to take the oath and to perform the obligations and responsibilities of an attorney. See rule 3 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/57f1215b09ea865985257c0b0059922e?Redirect](https://www.flsba.org/85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/57f1215b09ea865985257c0b0059922e?Redirect)), Background Investigation.

2-13 Prohibitions Against Application. A person is not eligible to apply for admission to The Florida Bar or for admission into the General Bar Examination unless the time period as indicated below has expired, or the required condition or status has been met.

2-13.1 Disbarred or Resigned Pending Disciplinary Proceedings. A person who has been disbarred from the practice of law, or who has resigned pending disciplinary proceedings and whose resignation from practice has been accepted by the Supreme Court of Florida, in proceedings based on conduct that occurred in Florida for the disbarment or resignation, will not be eligible to apply for readmission for a period of 5 years from the date of disbarment, or 3 years from the date of resignation, such other time as is set forth in any Florida rules of discipline, or longer period set for readmission by the Supreme Court of Florida. If the person's disbarment or disciplinary resignation is based on conduct that occurred in a foreign jurisdiction, then the person will not be eligible to apply for admission or readmission to The Florida Bar until the person is readmitted in the foreign jurisdiction in which the conduct that resulted in discipline occurred. Readmission must occur in the foreign jurisdiction in which the conduct occurred even if Florida imposed discipline prior to the imposition of discipline in the other jurisdiction and even if the person would otherwise be eligible for readmission under the terms of any Florida discipline.

2-13.15 Public Hearing. Once eligibility has been established, and following completion of the background investigation, the applicant who has been disbarred, or who has resigned pending disciplinary proceedings, will be required to appear for a formal hearing that is open to the public as provided by rule 3-22.7 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/47e61a35a212da2f85257c59005a57dd?Redirect](https://www.flsba.org/85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/47e61a35a212da2f85257c59005a57dd?Redirect)).

2-13.2 Suspension for Disciplinary Reasons. A person who has been suspended for disciplinary reasons from the practice of law in a foreign jurisdiction is not eligible to apply until expiration of the period of suspension. If the person's suspension occurred in the person's home state, then the person is not eligible to apply for admission to The Florida Bar until the person is reinstated to the practice of law in the person's home state.

2-13.25 Satisfaction of Court-Ordered Restitution and Disciplinary Costs. Except upon a showing of exceptional circumstances, a person who was disbarred, resigned with pending disciplinary proceedings, or was suspended in Florida or from a foreign jurisdiction will not be eligible to apply except on proof of satisfaction in full of any restitution and disciplinary costs. Restitution consists of the following:

- a. restitution imposed by a court in its order of disbarment, resignation, or suspension;
- b. restitution ordered by a court in any underlying criminal case that resulted in the disbarment, resignation, or suspension; and;
- c. restitution owed for the payment of any claims by the Client's Security Fund in Florida or by a similar bar fund in a foreign jurisdiction.

Exceptional circumstances may be established by showing that the applicant has made diligent, good-faith efforts to satisfy the restitution and costs obligation and has demonstrated a consistent commitment to fully satisfy the obligation; the applicant has entered a payment plan which insures satisfaction in full as soon as practicable; and the payment plan is necessary to protect the interests of any person or entity entitled to payment.

2-13.3 Convicted Felon. A person who has been convicted of a felony is not eligible to apply until the person's civil rights have been restored.

2-13.4 Serving Felony Probation. A person who is serving a sentence of felony probation, regardless of adjudication of guilt, is not eligible to apply until termination of the period of probation.

2-13.5 Found Unqualified by Board. Any applicant or registrant who was previously denied admission by the board by a negotiated consent judgment or through a "Findings of Fact and Conclusions of Law" that has not been reversed by the Supreme Court of Florida, may reapply for admission by filing a new Bar Application after 2 years or such other period as may be set in the consent judgment or the Findings. The applicant or registrant will be eligible to take the General Bar Examination during the disqualification period.

2-14 Reapplications for Admission Any applicant or registrant who was previously denied admission by the board by a negotiated consent judgment or through a "Findings of Fact and Conclusions of Law" that has not been reversed by the Supreme Court of Florida may reapply for admission by filing a new Bar Application after 2 years or such other period as may be set in the consent judgment or the Findings. The new application must be filed on the form available on the board's website with current references, submission of fingerprints in the format required by the board, any supplemental documents that the board may reasonably require, the applicable fee, and a detailed written statement describing the scope and character of the applicant's evidence of rehabilitation as required by rule 3-13 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/07d21e094daf8cfd85257c5900548c90?Redirect](#)). The statement must be sworn and may include corroborating evidence such as letters and affidavits. Thereafter, the board will determine at an investigative hearing, a formal hearing, or both, if the applicant's evidence of rehabilitation is clear and convincing and will make a recommendation as required by rule 3-23.6 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/0a005fb14f146d0485257c59005ad4b8?Redirect](#)). In determining whether an applicant should appear before an investigative hearing panel, a formal hearing panel, or both, the board is clothed with broad discretion.

2-20 Applications and Fees.

2-21 Applications Every applicant for admission to The Florida Bar must file with the board a Bar Application on the form available on the board's website. Law student registrants who register with the board under rule 2-21.2 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/722db4e97a2cd45585257c440057a251?Redirect](#)) must file a Registrant Bar Application and a Supplement to Registrant Bar Application. The Bar Application or Registrant Bar Application must be completed interactively online using instructions on the board's website.

2-21.1 Admission to General Bar Examination. A person who, prior to the applicable filing deadline specified in rule 4-42

([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/fdcd6b3c9b27659385257c59006236b5?Redirect](#)) or the applicable late filing deadline specified in rule 4-43

([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/341e0ade49d8c6e385257c0b005d995b?Redirect](#)), has not filed with the board the Bar Application (or, in the case of a law student registrant, the Registrant Bar Application and the Supplement to Registrant Bar Application) and paid the appropriate filing fee, will not be permitted to take the General Bar Examination.

ees will not be permitted to take the General Bar Examination.

2-21.2 Registration. Law students are encouraged to register with the board within the first year of law school. Every law student intending to apply for admission to The Florida Bar, following the commencement of the study of law in an accredited law school, may register with the board by filing a Registrant Bar Application on the form available on the board's website accompanied by the applicable filing fee, and any supplemental documents that reasonably may be required by the board. See rule 2-23.1 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/0cb16cbf0a22abd485257c0b0072a165?Redirect](http://__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/0cb16cbf0a22abd485257c0b0072a165?Redirect)) for a schedule of fees. A basic character and fitness investigation will be conducted in areas of possible concern on each registrant. The Registrant Bar Application must be converted into a Bar Application by the filing of a Supplement to Registrant Bar Application available online on the board's website. Each law student registrant is encouraged to file the Supplement to Registrant Bar Application at the beginning of the student's final year in law school to ensure timely completion of the board's character and fitness investigation.

2-22 Character and Fitness Investigation. On the filing of a Bar Application or a Registrant Bar Application, the board will initiate a character and fitness investigation under these rules. When a law student registrant files a Supplement to Registrant Bar Application, the board will update the character and fitness investigation conducted following such student's filing of the Registrant Bar Application.

2-23 Application Fees. All fees are set by order of the Supreme Court of Florida and are subject to change by published order of the court. The total application fee is due and payable to the Florida Board of Bar Examiners by the applicant when filing the Bar Application, the Registrant Bar Application, or the Supplement to Registrant Bar Application, and no application will be considered complete without the full fee. Any fee paid by an applicant or registrant will not be refunded.

2-23.1 Student Registrant Fee. Except as provided below, every law student filing a Registrant Bar Application with the board must file with the completed Registrant Bar Application the fee of \$400. For any law student who files a Registrant Bar Application by the deadlines established, discounted early registration fees are available as follows:

- a. \$100. For those students who commence the study of law in:
 1. August or September and who file a Registrant Bar Application by the following January 15;
 2. January or February and who file a Registrant Bar Application by the following June 15;
 3. May or June and who file a Registrant Bar Application by the following October 15.
- b. \$350. For those students who commence the study of law in:
 1. August or September and who file a Registrant Bar Application by the following March 15;
 2. January or February and who file a Registrant Bar Application by the following August 15; or
 3. May or June and who file a Registrant Bar Application by the following December 15.

2-23.2 Student Applicant Fee. Applicants who did not file the Registrant Bar Application with the board as law students and who have not been admitted to the bar in any jurisdiction for a period in excess of 12 months, excluding time spent in military service of the United States, must file with the Bar Application the fee of \$1,000.

2-23.3 Supplement to Registrant Bar Application Fee. Applicants who filed the Registrant Bar Application with the board as law students and who have not been admitted to the bar in any jurisdiction for a period in excess of 12 months, excluding time spent in military service of the United States, must file with the Supplement to Registrant Bar Application the applicable fee as follows:

- a. Less than 5 years. If the Supplement to Registrant Bar Application is filed within 5 years of the filing date of the original Registrant Bar Application, the fee is \$600.
- b. More than 5 years. If the Supplement to Registrant Bar Application is filed more than 5 years after the filing of the original Registrant Bar Application, the fee is \$1,000 as set forth in rule 2-23.2 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b3f1a4d568ddf7a485257c440057ef5b?Redirect](http://__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b3f1a4d568ddf7a485257c440057ef5b?Redirect)), less any fee previously paid.

2-23.4 Attorney Fee. Applicants who have been admitted to the bar in any jurisdiction for a period in excess of 12 months, excluding time spent in military service of the United States, must file with the Bar Application a

fee based on the number of years the applicant has been admitted in another jurisdiction as follows:

- a. Less than 5 years. If the applicant has been admitted in another jurisdiction for more than 1 year but less than 5 years, the fee is \$1,600.
- b. 5 or more but less than 10 years. If the applicant has been admitted in another jurisdiction for 5 years or more but less than 10 years, the fee is \$2,000.
- c. 10 or more but less than 15 years. If the applicant has been admitted in another jurisdiction for 10 years or more but less than 15 years, the fee is \$2,400.
- d. 15 or more years. If the applicant has been admitted in another jurisdiction for 15 or more years, the fee is \$3,000.

2-23.5 Fee Determination. The fee for an admitted attorney is determined by the date of the filing of the Bar Application and the status of the applicant on that date as it relates to his or her admission to the bar of any foreign jurisdiction or United States military service.

2-23.6 Disbarred Attorney Fee. Applicants applying for admission after disbarment or resignation pending disciplinary proceedings in Florida or in any other jurisdiction must file with the Bar Application the fee of \$6,000.

2-28 Application Fee for Reapplication for Admission Based on Rehabilitation. Applicants or registrants who are reapplying for admission and asserting rehabilitation from prior conduct that resulted in a denial of admission through Findings of Fact and Conclusions of Law or Consent Judgment must file with the application a fee of \$2,200.

2-29 Stale File Fee. An applicant whose Bar Application has been on file for more than 3 years is required to file a new Bar Application on the form available on the board's website with current references, submission of fingerprints in the format required by the board, any supplemental documents that the board may reasonably require, and the applicable fee.

- a. If within 5 Years. If filed within 5 years of the filing date of the last application filed, a fee of \$525 is applicable.
- b. If more than 5 Years. If filed more than 5 years after the filing date of the last application filed, the full application fee under rules 2-23.2 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b3f1a4d568ddf7a485257c440057ef5b?Redirect](https://www.flsba.org/85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b3f1a4d568ddf7a485257c440057ef5b?Redirect)), 2-23.4 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/0f3c3657e468010585257c590047cb74?Redirect](https://www.flsba.org/85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/0f3c3657e468010585257c590047cb74?Redirect)), or 2-23.6 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/e6e05e134dbec1d185257c59004843dc?Redirect](https://www.flsba.org/85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/e6e05e134dbec1d185257c59004843dc?Redirect)) above is applicable.

2-30 Petitions Relating to Administrative Rulings.

2-30.1 Filed with the Board. Any applicant or registrant who is dissatisfied with an administrative decision of the board that does not concern character and fitness matters may petition the board for reconsideration of the decision. Applicants also may petition the board for a suspension or waiver of any bar admission rule or regulation. A petition seeking a suspension or waiver of a rule or seeking review of an administrative decision not related to a character and fitness recommendation may be presented in the form of a letter, must be filed with the board within 60 days after receipt of written notice of the board's action complained of, and must be filed with a fee of \$75.

2-30.2 Filed with the Court. Any applicant or registrant who is dissatisfied with an administrative decision of the board that does not concern character and fitness matters may, within 60 days after receipt of written notice of that decision, file a petition with the Supreme Court of Florida for review of the action. If not inconsistent with these rules, the Florida Rules of Appellate Procedure are applicable to all proceedings filed in the Supreme Court of Florida. A copy of the petition must be served on the executive director of the board. The applicant seeking review must serve an initial brief within 30 days of the filing of the petition. The board will have 30 days to serve an answer brief after the service of the applicant's initial brief. The applicant may serve a reply brief within 30 days after the service of the answer brief.

RULE 3 BACKGROUND INVESTIGATION

3-10 Standards of an Attorney. An attorney should have a record of conduct that justifies the trust of clients

3-10 Standards of an Attorney. An attorney should have a record of conduct that justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to him or her.

3-10.1 Essential Eligibility Requirements. The board considers the following attributes to be essential for all applicants and registrants seeking admission to The Florida Bar:

- a. knowledge of the fundamental principles of law and their application;
- b. ability to reason logically and accurately analyze legal problems; and,
- c. ability to and the likelihood that, in the practice of law, one will:
 1. comply with deadlines;
 2. communicate candidly and civilly with clients, attorneys, courts, and others;
 3. conduct financial dealings in a responsible, honest, and trustworthy manner;
 4. avoid acts that are illegal, dishonest, fraudulent, or deceitful; and,
 5. comply with the requirements of applicable state, local, and federal laws, rules, and regulations; any applicable order of a court or tribunal; and the Rules of Professional Conduct.

3-11 Disqualifying Conduct. A record manifesting a lack of honesty, trustworthiness, diligence, or reliability of an applicant or registrant may constitute a basis for denial of admission. The revelation or discovery of any of the following may be cause for further inquiry before the board recommends whether the applicant or registrant possesses the character and fitness to practice law:

- a. unlawful conduct;
- b. academic misconduct;
- c. making or procuring any false or misleading statement or omission of relevant information, including any false or misleading statement or omission on the Bar Application, or any amendment, or in any testimony or sworn statement submitted to the board;
- d. misconduct in employment;
- e. acts involving dishonesty, fraud, deceit, or misrepresentation;
- f. abuse of legal process;
- g. financial irresponsibility;
- h. neglect of professional obligations;
- i. violation of an order of a court;
- j. evidence of mental or emotional instability;
- k. evidence of drug or alcohol dependency;
- l. denial of admission to the bar in another jurisdiction on character and fitness grounds;
- m. disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction; or
- n. any other conduct that reflects adversely on the character or fitness of the applicant.

3-12 Determination of Present Character. The board must determine whether the applicant or registrant has provided satisfactory evidence of good moral character. The following factors, among others, will be considered in assigning weight and significance to prior conduct:

assigning weight and significance to prior conduct:

- a. age at the time of the conduct;
- b. recency of the conduct;
- c. reliability of the information concerning the conduct;
- d. seriousness of the conduct;
- e. factors underlying the conduct;
- f. cumulative effect of the conduct or information;
- g. evidence of rehabilitation;
- h. positive social contributions since the conduct;
- i. candor in the admissions process; and,
- j. materiality of any omissions or misrepresentations.

3-13 Elements of Rehabilitation. Any applicant or registrant who affirmatively asserts rehabilitation from prior conduct that adversely reflects on the person's character and fitness for admission to the bar must produce clear and convincing evidence of rehabilitation including, but not limited to, the following elements:

- a. strict compliance with the specific conditions of any disciplinary, judicial, administrative, or other order, where applicable;
- b. unimpeachable character and moral standing in the community;
- c. good reputation for professional ability, where applicable;
- d. lack of malice and ill feeling toward those who, by duty, were compelled to bring about the disciplinary, judicial, administrative, or other proceeding;
- e. personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;
- f. restitution of funds or property, where applicable; and,
- g. positive action showing rehabilitation by occupation, religion, or community or civic service. Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to The Florida Bar because service to one's community is an implied obligation of members of The Florida Bar.

3-14 Bar Application and Supporting Documentation.

3-14.1 Filed as an Applicant. Applicants are required to file complete and sworn Bar Applications. Transcripts required by this rule must be sent directly to the board from the educational institutions. The application will not be deemed complete until all of the following items have been received by the board:

- a. an authorization and release on a form available on the board's website requesting and directing the inspection of and furnishing to the board, or any of its authorized representatives, all relevant documents, records, or other information pertaining to the applicant, and releasing any person, official, or representative of a firm, corporation, association, organization, or institution from any and all liability in respect to the inspection or the furnishing of any information;
- b. a Certificate of Dean certifying the applicant's graduation from a law school accredited by the American Bar Association;
- c. an official transcript of academic credit from each law school attended including the law school

certifying that the applicant has received the degree of bachelor of laws or doctor of jurisprudence;

d. if the applicant received an undergraduate degree, then an official transcript from the institution that awarded the degree;

e. if the applicant has been admitted to the practice of law in 1 or more jurisdictions, evidence satisfactory to the board that the applicant is in good standing in each jurisdiction, and a copy of the application for admission filed in each jurisdiction;

f. an affidavit on a form available on the board's website attesting that the applicant has read Chapter 4, Rules of Professional Conduct, and Chapter 5, Rules Regulating Trust Accounts, of the Rules Regulating The Florida Bar; and

g. supporting documents and other information as may be required in the forms available on the board's website, and other documents, including additional academic transcripts, as the board may require.

3-14.2 Filed as a Registrant. A registrant is required to file a complete and sworn Registrant Bar Application. Transcripts required by this rule must be sent directly to the board from the educational institutions. The application will not be deemed complete until all of the following items have been received by the board:

a. an authorization and release on a form available on the board's website requesting and directing the inspection of and furnishing to the board, or any of its authorized representatives, all relevant documents, records, or other information pertaining to the registrant, and releasing any person, official, or representative of a firm, corporation, association, organization, or institution from any and all liability in respect to the inspection or the furnishing of any information;

b. if the applicant received an undergraduate degree, then an official transcript from the institution that awarded the degree; and

c. supporting documents and other information as may be required in the forms available on the board's website, and other documents, including additional academic transcripts, as the board may require.

3-14.3 Defective Applications. A Bar Application or Registrant Bar Application initially filed in a defective condition (e.g., without notarization, without supporting documents, or having blank or incomplete items on the application) may delay the initiation or the processing of the background investigation. A Bar Application or Registrant Bar Application filed in a defective condition will be accepted, but a fee of \$150 will be assessed.

3-14.4 Filing Timely Amendments. An application filed by an applicant or registrant is a continuing application and the applicant or registrant has an obligation to keep the responses to the questions current, complete, and correct by the filing of timely amendments to the application, on forms available on the board's website, until the date of an applicant's submission to the Oath of Attorney in Florida. An amendment to the application is considered timely when made within 30 days of any occurrence that would change or render incomplete any answer to any question on the application.

3-14.5 Timely Processing. In order to ensure timely processing of the background investigation, an applicant or registrant must be responsive to board requests for further information. The Bar Application or Registrant Bar Application must be vigorously pursued by the applicant or registrant.

3-14.6 Non-Compliance.

a. An applicant's failure to respond to inquiry from the board within 90 days may result in termination of his or her Bar Application and require reapplication and payment of all fees as if the applicant were applying for the first time.

b. A registrant's failure to respond to inquiry from the board within 90 days may result in cancellation of his or her application and require full payment of the student registrant fee.

3-15 Withdrawal of a Bar Application without Prejudice. An applicant or registrant may request withdrawal of a Bar Application without prejudice. The board will consider acceptance of the request, but may continue its investigative and adjudicative functions to conclusion.

3-16 Withdrawal of a Bar Application with Prejudice. An applicant or registrant may request withdrawal of a Bar Application with prejudice. The board will accept the withdrawal and immediately dismiss its investigative and adjudicative functions. An applicant or registrant who files a withdrawal with prejudice will be permanently barred

from filing a subsequent application.

3-17 Extraordinary Investigative Expenses.

3-17.1 Transcript or Records Cost. The cost of a transcript or any record or document reasonably required by the board in the conduct of investigative or adjudicative functions will be paid by the applicant or registrant.

3-17.2 Petition for Extraordinary Expenses. On a showing of actual or anticipated extraordinary expenditures by the board, the Supreme Court of Florida may order any applicant or registrant to pay to the board additional sums including attorney's fees or compensation necessary in the conduct of an inquiry and investigation into the character and fitness and general qualifications of the applicant or registrant including the procurement and presentation of evidence and testimony at a formal hearing.

3-20 Investigative Process.

3-21 Inquiry Process. The board will conduct an investigation to determine the character and fitness of each applicant or registrant. In each investigation and inquiry, the board may obtain information pertaining to the character and fitness of the applicant or registrant and may take and hear testimony, administer oaths and affirmations, and compel by subpoena the attendance of witnesses and the production of documents.

3-21.1 Noncompliance with Subpoena Issued by the Board. Any person subpoenaed to appear and give testimony or to produce documents who refuses to appear to testify before the board, to answer any questions, or to produce documents, may be held in contempt of the board. The board will report the fact that a person under subpoena is in contempt of the board for proceedings that the Supreme Court of Florida may deem advisable.

3-22 Investigative Hearing. An applicant or registrant may be requested to appear for an investigative hearing. Investigative hearings will be informal but thorough, with the object of ascertaining the truth. Technical rules of evidence need not be observed. The admissibility of results of a polygraph examination will be determined in accordance with Florida law. An investigative hearing will be convened before a division of the board consisting of not fewer than 3 members of the board. Any member of the board may administer oaths and affirmations during the hearing.

3-22.1 Investigative Hearing Cost. Any applicant or registrant requested to appear for an investigative hearing must pay the administrative cost of \$250.

3-22.2 Response and Selection of a Preferred Hearing Date. An applicant or registrant who has been requested to appear for an investigative hearing must promptly respond to written notice from the board and give notice of preferred dates. Failure to respond within 60 days will result in termination of the application for non-compliance as provided in rule 3-14.6
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/009e4fa6f1656e3285257c590059521f?Redirect).

3-22.3 Investigative Hearing Postponement. Postponement of a previously scheduled investigative hearing is permitted on written request and for good cause when accompanied by the following fee:

- a. \$75 if the request is received at least 31 days before the hearing date; or
- b. \$125 if the request is received less than 31 days before the hearing date.

3-22.4 Board Waiver of an Investigative Hearing. In cases where the facts are undisputed regarding an applicant's or registrant's prior conduct that adversely affects his or her character and fitness for admission to The Florida Bar, the board may forgo an investigative hearing and proceed directly with the execution of a Consent Agreement or the filing of Specifications as provided in rule 3-22.5
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/748fa7380d1ce36585257c59005a0976?Redirect).

3-22.5 Board Action Following an Investigative Hearing. After an investigative hearing, the board may make any of the following determinations:

- a. The applicant or registrant has established his or her qualifications as to character and fitness.
- b. The board will offer to the applicant or registrant a Consent Agreement in lieu of the filing of

Specifications pertaining to drug, alcohol, or psychological problems and subject to provisions of rule 5-15 (/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/a197d34bb2ad29f385257c5a00484c36?Redirect). In a Consent Agreement, the board is authorized to recommend to the court the admission of the applicant who has agreed to abide by specified terms and conditions on admission to The Florida Bar.

c. Further investigation into the applicant's or registrant's character and fitness is warranted.

d. The board will file Specifications charging the applicant or registrant with matters that, if proven, would preclude a favorable finding by the board.

3-22.6 Investigative Hearing Transcript Cost. The cost of a transcript reasonably required by the board in the conduct of investigative or adjudicative functions must be paid by the applicant or registrant.

3-22.7 Public Hearing for Disbarred/Resigned Attorneys. All applicants who have been disbarred from the practice of law, or who have resigned pending disciplinary proceedings must appear before a quorum of the board for a formal hearing. The formal hearing will be open to the public, and the record produced at the hearing and the Findings of Fact and Conclusions of Law are public information and exempt from the confidentiality provision of rule 1-60 (/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/cf598d9efb2ac7e685257c40007481bc?Redirect).

3-23 Specifications. Specifications are formal charges filed in those cases where the board has cause to believe that the applicant or registrant is not qualified for admission to The Florida Bar. If the board votes to prepare and file Specifications, the Specifications are served on the applicant or registrant. The response to Specifications must be filed in the form of a sworn, notarized answer to the Specifications within 20 days from receipt of the Specifications.

3-23.1 Failure to File the Answer. If an applicant or registrant fails to file an answer to the Specifications within the 20-day deadline or within any extension of time allowed by the board, the Specifications will be deemed admitted. The board will enter Findings of Fact, finding the Specifications proven, and appropriate conclusions of law that may include a recommendation that the applicant not be admitted to The Florida Bar, or that the registrant has not established his or her qualifications as to character and fitness.

3-23.2 Formal Hearing. Any applicant or registrant who receives Specifications is entitled to a formal hearing before the board, representation by counsel at his or her own expense, disclosure by the Office of General Counsel of its witness and exhibit lists, cross-examination of witnesses, presentation of witnesses and exhibits on his or her own behalf, and access to the board's subpoena power. After receipt of the answer to Specifications, the board will provide notice of the dates and locations available for the scheduling of the formal hearing. Formal hearings are conducted before a panel of the board that will consist of not fewer than 5 members. The formal hearing panel will consist of members of the board other than those who participated in the investigative hearing. This provision may be waived with the consent of the applicant or registrant. The weight to be given all testimony and exhibits received in evidence at a formal hearing must be considered and determined by the board. The board is not bound by technical rules of evidence at a formal hearing. A judgment of guilt to either a felony or misdemeanor will constitute conclusive proof of the criminal offense(s) charged. An order withholding adjudication of guilt of a charged felony will constitute conclusive proof of the criminal offense(s) charged. An order withholding adjudication of guilt of a charged misdemeanor will be admissible evidence of the criminal offense(s) charged. The admissibility of results of a polygraph examination will be in accordance with Florida law.

3-23.3 Formal Hearing Cost. Any applicant or registrant who receives Specifications that require the scheduling of a formal hearing must pay the administrative cost of \$600.

3-23.4 Selection of a Preferred Formal Hearing Date. The applicant or registrant and the board must agree on a date and location for the formal hearing. If the applicant or registrant fails to agree on 1 of the dates and locations proposed, the board will set the date and location of the hearing. If the applicant or registrant, without good cause, fails to attend the formal hearing, the Specifications will be deemed admitted. The board will enter Findings of Fact, finding the Specifications proven, and appropriate conclusions of law that may include a recommendation that the applicant not be admitted to The Florida Bar or that the registrant has not established his or her qualifications as to character and fitness.

3-23.5 Formal Hearing Postponement. Postponement of a previously scheduled formal hearing is permitted by written request and for good cause when accompanied by the following fee:

- a. \$250 if request is received between 45 and 31 days before the hearing date; or
- b. \$600 if the request is received less than 31 days before the hearing date.

3-23.6 Board Action Following Formal Hearing. Following the conclusion of a formal hearing, the board will promptly notify the applicant or registrant of its decision. The board may make any of the following recommendations:

- a. The applicant or registrant has established his or her qualifications as to character and fitness.
- b. The applicant be conditionally admitted to The Florida Bar in exceptional cases involving drug, alcohol, or psychological problems on the terms and conditions specified by the board and subject to the provisions of rule 5-15
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/a197d34bb2ad29f385257c5a00484c36?Redirect).
- c. The applicant's admission to The Florida Bar be withheld for a specified period of time not to exceed 2 years. At the end of the specified period of time, the board will recommend the applicant's admission if the applicant has complied with all special conditions outlined in the Findings of Fact and Conclusions of Law.
- d. The applicant or registrant has not established his or her qualifications as to character and fitness and that the applicant or registrant be denied admission to The Florida Bar. A 2-year disqualification period is presumed to be the minimum period of time required before an applicant or registrant may reapply for admission and establish rehabilitation. In a case involving significant mitigating circumstances, the board has the discretion to recommend that the applicant or registrant be allowed to reapply for admission within a specified period of less than 2 years. In a case involving significant aggravating factors (including but not limited to material omissions or misrepresentations in the application process), the board has the discretion to recommend that the applicant or registrant be disqualified from reapplying for admission for a specified period greater than 2 years, but not more than 5 years. In a case involving extremely grievous misconduct, the board has the discretion to recommend that the applicant or registrant be permanently prohibited from applying or reapplying for admission to The Florida Bar.

3-23.7 Findings of Fact and Conclusions of Law. In cases involving a recommendation other than under rule 3-23.6(a)

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/0a005fb14f146d0485257c59005ad4b8?Redirect), the board will expeditiously issue its written Findings of Fact and Conclusions of Law. The Findings must be supported by competent, substantial evidence in the formal hearing record. The Findings, conclusions, and recommendation are subject to review by the Supreme Court of Florida as specified under rule 3-40 (/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/ec515aadfea6739c85257c59005b6274?Redirect). The Findings, conclusions, and recommendation are final, if not appealed, except in cases involving a favorable recommendation for applicants seeking readmission to the practice of law after having been disbarred or having resigned pending disciplinary proceedings. In those cases, the board will file a report containing its recommendation with the Supreme Court of Florida for final action by the court. Admission to The Florida Bar for those applicants will occur only by public order of the court. All reports, pleadings, correspondence, and papers received by the court in those cases are public information and exempt from the confidentiality provision of rule 1-60
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/cf598d9efb2ac7e685257c40007481bc?Redirect).

3-23.8 Formal Hearing Transcript Cost. The cost of a transcript reasonably required in the conduct of investigative or adjudicative functions must be paid by the applicant or registrant.

3-23.9 Negotiated Consent Judgments. Counsel for the board and an applicant or registrant may waive a formal hearing and enter into a proposed consent judgment. The consent judgment must contain a proposed resolution of the case under 1 of the board action recommendations specified above. If the consent judgment is approved by the full board, then the case will be resolved in accordance with the consent judgment without further proceedings.

3-30 Petition for Board Reconsideration. Any applicant or registrant who is dissatisfied with the recommendation concerning his or her character and fitness may, within 60 days from the date of the Findings of Fact and Conclusions of Law, file with the board a petition for reconsideration with a fee of \$165. The petition must contain new and material evidence that by due diligence could not have been produced at the formal hearing. Evidence of rehabilitation as provided by rule 3-13

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/07d21e094daf8cfd85257c5900548c90?Redirect) is not

permitted in a petition for reconsideration. Only 1 petition for reconsideration may be filed.

3-40 Petition for Court Review.

3-40.1 Dissatisfied with Board's Recommendation. Any applicant or registrant who is dissatisfied with the recommendation concerning his or her character and fitness may petition the Supreme Court of Florida for review within 60 days from receipt of the Findings of Fact and Conclusions of Law or within 60 days of receipt of notice of the board's action on a petition filed under rule 3-30 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/596806f6f7f7d29485257c59005b4d06?Redirect](#)). If not inconsistent with these rules, the Florida Rules of Appellate Procedure are applicable to all proceedings filed in the Supreme Court of Florida. A copy of the petition must be served on the executive director of the board. The applicant seeking review must serve an initial brief within 30 days of the filing of the petition. The board will have 30 days to serve an answer brief after the service of the applicant's initial brief. The applicant may serve a reply brief within 30 days after the service of the answer brief. At the time of the filing of the answer brief, the executive director will transmit the record of the formal hearing to the court.

3-40.2 Dissatisfied with Length of Board's Investigation. Any applicant or registrant whose character and fitness investigation is not finished within 9 months from the date of submission of a completed Bar Application or Registrant Bar Application may petition the Supreme Court of Florida for an order directing the board to conclude its investigation. If not inconsistent with these rules, the Florida Rules of Appellate Procedure are applicable to all proceedings filed in the Supreme Court of Florida. A copy of the petition must be served on the executive director of the board. The board will have 30 days after the service of the petition to serve a response. The applicant may serve a reply within 30 days after the service of the board's response.

RULE 4 BAR EXAMINATION

4-10 General Information.

4-11 Florida Bar Examination. The Florida Bar Examination will consist of a General Bar Examination and the Multistate Professional Responsibility Examination (MPRE).

4-12 Requirement to Submit. All individuals who seek the privilege of practicing law in the State of Florida must take the Florida Bar Examination.

4-13 Technical Competence. All applicants seeking admission to The Florida Bar must produce satisfactory evidence of technical competence by passing all parts of the Florida Bar Examination.

4-13.1 Educational Qualifications.

a. Eligibility. An applicant may take the MPRE prior to graduation from law school; however, the requirements of rule 4-18.1 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b15eba520e00ea0285257c59005fe47d?Redirect](#)) are applicable. To be eligible to take any portion of the General Bar Examination, an applicant must either:

1. complete the requirements for graduation, or receive the degree of bachelor of laws or doctor of jurisprudence, from an accredited law school or within 12 months of accreditation; or,
2. be found educationally qualified under the alternative method of educational qualification provided in rule 4-13.4 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b35e3538964d409e85257c59005d0207?Redirect](#)).

b. Proscribed Substitutions. Except as provided in rule 4-13.4 ([/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b35e3538964d409e85257c59005d0207?Redirect](#)), none of the following may be substituted for the required degree from an accredited law school:

1. private study, correspondence school, or law office training;
2. age or experience; or,
3. waived or lowered standards of legal training for particular persons or groups.

4-13.2 Definition of Accredited. An "accredited" law school is any law school approved or provisionally approved by the American Bar Association at the time of the applicant's graduation or within 12 months of the applicant's graduation.

4-13.3 Definition of Degree Requirements. The term "complete the requirements for graduation" refers to the time when completion of the requirements for graduation is recorded in the office of the law school dean or administrator.

4-13.4 Alternative Method of Educational Qualification.

a. Applicants Not Meeting Educational Qualifications. An applicant who does not meet the educational qualifications in rule 4-13.1

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/aa1b4f3fc26c872f85257c59005bcc20?Redirect), must meet the following requirements:

1. evidence as the board may require that the applicant was engaged in the practice of law for at least 10 years in the District of Columbia, in other states of the United States of America, or in federal courts of the United States or its territories, possessions, or protectorates, and was in good standing at the bar of the jurisdictions in which the applicant practiced; and

2. a representative compilation of the work product in the field of law showing the scope and character of the applicant's previous experience and practice at the bar, including samples of the quality of the applicant's work, including pleadings, briefs, legal memoranda, contracts, or other working papers that the applicant considers illustrative of his or her expertise and academic and legal training. The representative compilation of the work product must be confined to the applicant's most recent 10 years of practice and must be complete and include all supplemental documents requested.

b. Deadline for Filing Work Product. To be considered timely filed, the work product must be complete with all required supplemental documentation and filed by the filing deadline of the General Bar Examination as required by rule 4-42

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/fdcd6b3c9b27659385257c59006236b5?Redirect). Work product initially filed incomplete and perfected after the deadline will not be considered timely filed. Late or incomplete work product will be given consideration for admission into the next administration of the bar examination for which the deadline has not passed.

c. Acceptance of Work Product. If a thorough review of the representative compilation of the work product and other materials submitted by the applicant shows that the applicant is a lawyer of high ability whose reputation for professional competence is above reproach, the board may admit the applicant to the General Bar Examination and accept score reports from the National Conference of Bar Examiners or its designee.

d. Board Discretion. In evaluating academic and legal scholarship under subdivision (a), the board is clothed with broad discretion.

4-14 Dates of Administration. The General Bar Examination will be administered on the last Tuesday and Wednesday of February and July of each calendar year. The Multistate Professional Responsibility Examination is administered in March, August, and November of each year.

4-15 Location of Administration. The General Bar Examination will be held in locations in the State of Florida as the board may from time to time direct. The Multistate Professional Responsibility Examination (MPRE) is administered 3 times each year throughout the country at various locations selected by the National Conference of Bar Examiners or its designee.

4-16 Publication of Examination Topics and Study Materials. The board will publish the topics included on the bar examination and also make suggestions for the information and guidance of students to promote their studies.

4-16.1 Part A Examination Study Guide. The board will provide a bar examination study guide that includes essay questions from 2 previously administered General Bar Examinations, sample answers to the essay questions, and sample multiple-choice questions from Part A of the General Bar Examination. The study guide is available on the board's website.

4-16.2 Copies of Essay Answers. The board will provide, on request from an applicant, a copy of his or her answers to essay questions from a single General Bar Examination for the period of time from the release of the examination results until the administration of the next examination. The answers will not reflect any grading marks and will be forwarded on written request accompanied by a fee of \$50.

4-17 Test Accommodations.

4-17.1 Accommodations. In accordance with the Americans with Disabilities Act, test accommodations are provided by the board at no additional cost to applicants.

4-17.2 Requests for Test Accommodations. Applicants seeking test accommodations because of disability must file a written petition for accommodations accompanied by supporting documentation or additional information as reasonably may be required on the forms available on the board's website. Receipt of requests for test accommodations and supporting documentation are subject to the deadline and late filing fees applicable to all examinees as set forth in rules 4-42.3

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/e1f0c6d2e3d141ce85257c5900625e88?Redirect) and 4-42.4

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/d1742508db9c580c85257c59006269cf?Redirect).

4-18 Time Limitation on Passing Examination.

4-18.1 Twenty-Five Months. An applicant must successfully complete the General Bar Examination and the Multistate Professional Responsibility Examination (MPRE) within 25 months of the date of the administration of any part of the examination that is passed. If an applicant fails to pass all parts within 25 months of first passing any part, passing score(s) of individual parts older than 25 months are deleted.

4-18.2 Five Years. An applicant's passing scores on the Florida Bar Examination will be valid for a period of 5 years from the date of the administration of the last part of the Florida Bar Examination that he or she passed. If the 5-year period expires without admission, an applicant, except for good cause shown, will be required to retake the Florida Bar Examination and again pass all parts of the examination.

4-20 General Bar Examination. A portion of the General Bar Examination will consist of questions in the form of hypothetical fact problems requiring essay answers. Essay questions may not be labeled as to subject matter. Questions may be designed to require answers based on Florida case or statutory law of substantial importance. The General Bar Examination will consist of 2 parts (A and B). Part A will be a combination of essay and multiple-choice questions and Part B will be the Multistate Bar Examination (MBE).

4-21 Purpose. The General Bar Examination will test the applicant's ability to reason logically, to analyze accurately the problem presented, and to demonstrate a thorough knowledge of the fundamental principles of law and their application.

4-22 Part A. Part A will consist of 6 one-hour segments. One segment will include the subject of Florida Rules of Civil and Criminal Procedure and the Florida Rules of Judicial Administration 2.330, 2.420, 2.505 and 2.515. The remaining 5 segments, each of which will include no more than 3 subjects, will be selected from the following subjects including their equitable aspects:

- a. Florida constitutional law;
- b. federal constitutional law;
- c. business entities;
- d. wills and administration of estates;
- e. trusts;
- f. real property;
- g. evidence;
- h. torts;
- i. criminal law, constitutional criminal procedure, and juvenile delinquency;
- j. contracts;

- k. Articles 3 and 9 of the Uniform Commercial Code;
- l. family law and dependency;
- m. Chapter 4, Rules of Professional Conduct of the Rules Regulating The Florida Bar;
- n. Chapter 5, Rules Regulating Trust Accounts of the Rules Regulating The Florida Bar; and
- o. professionalism.

4-23 Part B. Part B will be the Multistate Bar Examination (MBE) offered to each jurisdiction by the National Conference of Bar Examiners.

4-23.1 Transfer of Score. A score achieved by an applicant on the Multistate Bar Examination administered in a jurisdiction other than the State of Florida will not be transferred to or recognized by the board.

4-24 General Bar Examination Preparation and Grading. The board may use the services of expert drafters to prepare bar examination questions, either by arranging for the drafting services of qualified persons, including out-of-state law teachers, or by using the services of the National Conference of Bar Examiners or another national agency. The board may use the services of trained expert readers. Readers will be selected solely upon the qualifications of the individuals.

4-24.1 Essay Questions. Every essay question, whether drafted by the examiners or by expert drafters, will be thoroughly briefed on every point of law in the question and the question analyzed and approved by the board preceding inclusion of the question on the General Bar Examination.

4-24.2 Machine-Scored Questions. Every machine-scored item of Part A must specify authority for the best response, and every item and authority should be analyzed and approved by the board preceding inclusion of the item on the General Bar Examination.

4-25 Submission Methods. Applicants who take the General Bar Examination must do so for the sole purpose of fulfilling the admission requirements for The Florida Bar. An applicant may elect to take the General Bar Examination by either of the following methods:

- a. Overall Method. Overall method is used only if the applicant takes Parts A and B during the same administration of the General Bar Examination.
- b. Individual Method. Individual method is used if the applicant takes only 1 part of the General Bar Examination. Applicants who elect to take only 1 part of the General Bar Examination under the individual method may not combine a score attained on 1 part from 1 administration with a score on the other part from a different administration. Applicants may not take Part A only using this method unless they have previously taken the Multistate Bar Examination (MBE) in Florida.

4-25.1 Retention of Passing Status. If an applicant attains a passing scaled score on only 1 part and elects to take the overall method of the General Bar Examination as described above, the previous passing status will not be replaced by a failing status if the applicant fails to achieve a passing score on a subsequent submission effort.

4-26 Scoring Method. Each examination paper produced by an applicant on the General Bar Examination will be separately graded. Papers will be graded and reported by number and not by applicant's name. The name of the writer of the examination paper will not be revealed by the staff to the members of the board or readers or any source other than the Supreme Court of Florida. To ensure maximum uniformity in all grading of essay questions, the board will use the services of multiple calibrated readers.

4-26.1 Examination Scaling. The scores of each section of Part A will be converted to a common scale by a recognized statistical procedure so that each section is equally weighted. The sum of the converted section scores is the total score for Part A. All total scores attained by the applicants on Part A are converted to the same distribution as their Multistate Bar Examination (MBE) scaled scores. MBE scores (Part B) are the scaled scores on the MBE provided by the National Conference of Bar Examiners. Scaled scores are used in order to ensure that the standard of measurement of competence from examination to examination is not affected by the difficulty of the particular test or the ability of that particular group as distinguished from the general population of applicants.

4-26.2 Pass/Fail Line. Effective July 1, 2004, each applicant must attain a scaled score of 136 or better on Part A and on Part B under the individual method and an average of 136 or better under the overall method, or

Part A and on Part B under the individual method and an average of 150 or better under the overall method, or such scaled score as may be fixed by the court.

4-30 Multistate Professional Responsibility Examination. The Multistate Professional Responsibility Examination (MPRE) is the examination offered to jurisdictions by the National Conference of Bar Examiners.

4-31 Purpose. The purpose of the MPRE is to measure the applicant's knowledge of the ethical standards of the legal profession.

4-32 Applications and Filing Deadlines. Applications for admission into the Multistate Professional Responsibility Examination (MPRE) are distributed by and must be filed with the designee of the National Conference of Bar Examiners that administers the MPRE within the time limitations set by that authority.

4-33 Scoring Method. Each examination paper produced by an applicant on the MPRE will be separately graded. The raw score attained by each applicant will be converted to a scaled score by the National Conference of Bar Examiners or its designee in order to ensure that the standard of measurement of competence from examination to examination is not affected by the difficulty of the particular test or the ability of that particular group as distinguished from the general population of applicants.

4-33.1 Transfer of Score. The applicant must direct requests to transfer the score attained on the MPRE to the agency that administers the MPRE. Scores are transferred on a certificate supplied by the agency and must be forwarded directly by that agency to the board.

4-33.2 Pass/Fail Line. On the MPRE, each applicant must attain a scaled score of 80 or better, or such scaled score as may be fixed by the court.

4-40 Application for the General Bar Examination.

4-41 Application Requirements. By the applicable filing deadline prescribed in rule 4-42 (/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/fdcd6b3c9b27659385257c59006236b5?Redirect) or the late filing deadline prescribed in rule 4-43 (/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/341e0ade49d8c6e385257c0b005d995b?Redirect), each applicant desiring to take the General Bar Examination for the first time must submit to the board either the complete Bar Application or, in the case of law student registrants, the Supplement to Registrant Bar Application, the appropriate applicant filing fee, a current 2" x 2" photograph of the applicant, and submission of fingerprints in the format required by the board.

4-42 Examination Filing Deadlines.

4-42.1 February Filing Deadline. Timely applications for admission to the February administration of the General Bar Examination must be postmarked or received not later than November 15 prior to the examination.

4-42.2 July Filing Deadline. Timely applications for admission to the July administration of the General Bar Examination must be postmarked or received not later than May 1 prior to the examination.

4-42.3 Deadline for Test Accommodations. Petitions for accommodations and supporting documentation are subject to the examination filing deadline. Applicants seeking test accommodations must file the Bar Application, Supplement to Registrant Bar Application, or Reexamination Application, petition, and supporting documents by the examination filing deadline to avoid examination late filing fees.

4-42.4 Cutoff for Test Accommodations. To avoid an undue burden on the board while it is making final preparations for the administration of the bar examination, a minimum amount of time is required for the orderly processing of a request for accommodations. Except for emergency petitions as designated by the board, no request for test accommodations will be processed if postmarked or received after January 15 for the February examination or after June 15 for the July examination.

4-43 Filing After the Deadline. Applicants seeking late filing for a General Bar Examination will be permitted to do so on payment of an additional fee as set out below, completion of the Bar Application, Supplement to Registrant Bar Application, or Reexamination Application, and receipt of all supporting documents.

4-43.1 \$325. If the Bar Application, Supplement to Registrant Bar Application, or Reexamination Application, as applicable, is postmarked or received on or before December 15 for the February examination or June 1 for

the July examination, the fee is \$325.

4-43.2 \$625. If the Bar Application, Supplement to Registrant Bar Application, or Reexamination Application, as applicable, is postmarked or received after December 15 but on or before January 15 for the February examination or after June 1 but on or before June 15 for the July examination, the fee is \$625. No Bar Application, Supplement to Registrant Bar Application, Reexamination Application, appropriate applicant filing fee, 2" x 2" photograph, or submission of fingerprints will be deemed to have met the late filing deadline if postmarked after January 15 for the February examination, or after June 15 for the July examination.

4-44 Computer Option. Applicants are permitted the use of a laptop computer with software designated by the board to complete answers to the essay portion of the General Bar Examination. Applicants seeking to use a laptop computer must complete a form available on the board's website and pay a fee of \$125.

4-45 Examination Postponement. Applicants seeking to postpone the taking of an individual part or the entire General Bar Examination must file a written request with the board. The applicable postponement fees based on the received date of the postponement request are set forth in rule 4-46
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/afdca115f96cea9285257c590062a16a?Redirect) below. Applicants who fail to request a postponement or who untimely request a postponement received by the board after the commencement of the bar examination must reapply under rule 4-47
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/7bee03568f72461285257c590063007f?Redirect).

4-46 Reapplication after Postponement. Applicants seeking to reapply after postponing as indicated above will be permitted admission into another General Bar Examination on filing with the board the Reexamination Application on the form available on the board's website and payment of the applicable postponement fee. To be timely filed, the completed application and appropriate fee must be postmarked or received by the examination filing deadline. If the Reexamination Application is not postmarked or received on or before the filing deadline or if filed incomplete, the appropriate examination late filing fee must be included. If requested by the board, an applicant will submit a current photograph. The fee payable with the Reexamination Application will be as follows:

- a. If the board receives the applicant's written notice of postponement under rule 4-45
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/6c377ade28b8041f85257c5900628e1b?Redirect) at least 7 days before the commencement of the administration of the postponed examination, the fee is \$100.
- b. If the board receives the applicant's written notice of postponement under rule 4-45
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/6c377ade28b8041f85257c5900628e1b?Redirect) prior to but less than 7 days before the commencement of the administration of the postponed examination, the fee is \$200.

4-47 Examination Reapplication. Applicants not covered by rule 4-46
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/afdca115f96cea9285257c590062a16a?Redirect) and seeking to reapply for all or part of the General Bar Examination will be permitted admission into another General Bar Examination on filing a Reexamination Application on the form available on the board's website and payment of the reapplication fee of \$450. To be timely filed, the completed Reexamination Application and fee must be postmarked or received by the examination filing deadline. If the Reexamination Application is not postmarked or received on or before the filing deadline or if filed incomplete, the appropriate examination late filing fee must be included. If requested by the board, an applicant will submit a current photograph.

4-50 Examination Administration.

4-51 Rules of Conduct. Applicants must abide by all rules governing the administration of the General Bar Examination as set out below.

4-51.1 Possession or Use of Unauthorized Materials or Equipment. Applicants must not possess or use any book bags, backpacks, purses, hat or baseball caps, notes, books, study materials, food or liquids, cellular telephones, beepers, watches or clocks with audible alarms, calculators, computers, or other electronic devices in the examination room without the prior written approval of the board.

4-51.2 Receipt of Unauthorized Aid. Applicants must not use answers or information from other applicants while taking the examination.

4-51.3 Observance of Examination Start/Stop Announcements. Applicants must not read questions on the

4-51.3 Observance of Examination Start/Stop Announcements. Applicants must not read questions on the examination prior to the announcement to begin the examination and must not continue to answer any questions after the announcement to stop because the session has ended.

4-51.4 Observance of Confidentiality of Machine-Scored Questions. Applicants must not remove any multiple-choice, machine-scored examination questions from the examination room or otherwise communicate the substance of any of those questions to persons who are employed by or associated with bar review courses.

4-52 Examination Proctors. The board may seek the assistance of other members of The Florida Bar in proctoring the bar examination.

4-60 Release of Examination Results.

4-61 Confidentiality. No information regarding applicants' scores will be released except as authorized by the rules or as directed by the Supreme Court of Florida.

4-62 General Bar Examination. The board will notify each person submitting to any part of the General Bar Examination whether the person has passed or failed any or all parts of the examination except any person whose grades have been impounded by the Supreme Court of Florida.

4-62.1 Impoundment of Examination Results. Results of the General Bar Examination will be impounded by the court if the applicant fails to pay the full balance of any application or examination late filing fee, or if the applicant is suspected of a violation of the examination administration rules of conduct.

4-62.2 Release of Impounded Examination Results. On submission of documentation that establishes that the applicant has paid all application and late fees, is determined not to have violated examination administration rules of conduct, and on payment of a \$100 impoundment fee, the board will request the court to release the impounded grades.

4-62.3 Date of Release. The date for release of the results from the General Bar Examination will be set by the court. At that time, all applicants who have passed all parts of the examination, but who have not been recommended to the court for admission to The Florida Bar will be advised of the status of their Bar Application.

4-63 Multistate Professional Responsibility Examination. Applicants will be notified by letter whether their Multistate Professional Responsibility Examination (MPRE) scores transferred to Florida are accepted.

4-64 Investigation of Examination-Related Conduct. If the board has cause to believe that an applicant has violated any of the eligibility or conduct rules relating to the General Bar Examination, the board may conduct an investigation, hold hearings, and make Findings under rule 3-20
(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b756de1b0739e24a85257c59005111d0?Redirect).

4-65 Invalidation of Examination Scores.

4-65.1 Relating to Educational Qualifications. If an applicant is found by the board after an investigation under rule 3-20

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b756de1b0739e24a85257c59005111d0?Redirect) to be in violation of rule 4-13.1

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/aa1b4f3fc26c872f85257c59005bcc20?Redirect), the result of the Florida Bar Examination will be invalidated. Once the results are invalidated and

subsequent to providing evidence that all eligibility requirements have been met, the applicant will be permitted to resubmit to the General Bar Examination by filing a new application and the reapplication fee.

4-65.2 Relating to Work Product Submission or Rules of Conduct. If an applicant is found by the board after an investigation under rule 3-20

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b756de1b0739e24a85257c59005111d0?Redirect) to have made a material misstatement or omission under rule 4-13.4

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b35e3538964d409e85257c59005d0207?Redirect), or to have violated the examination administration rules of conduct under rule 4-51

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/2563733cbb35199085257c5900631838?Redirect), the results of the Florida Bar Examination will be invalidated. The applicant will not be eligible to

submit another work product (if in violation of rule 4-13.4

(/___85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/b35e3538964d409e85257c59005d0207?Redirect)) or submit to another examination for a period of 5 years from the date that the board delivered its

re-direct)) or submit to another examination for a period of 5 years from the date that the board delivered its adverse Findings or the period of time set in the Findings.

RULE 5 RECOMMENDATIONS AND JURISDICTION

5-10 Recommendations and Admission. Every applicant who has complied with the requirements of the applicable rules for admission into the Florida Bar Examination, attained passing scores on the examination, met the requirements as to character and fitness, complied with the requirements of the applicable rules for admission into The Florida Bar, and who is 18 years of age or older will be recommended by the Florida Board of Bar Examiners to the Supreme Court of Florida for admission to The Florida Bar.

5-11 Supreme Court Action. If the court is satisfied with the qualifications of each applicant recommended, an order of admission will be made and entered in the minutes of the court. The court will designate the manner that applicants will take the oath.

5-12 Induction Ceremonies. Formal induction ceremonies will be scheduled after each release of grades from the previous administration of the bar examination. The ceremonies will be held at the Supreme Court of Florida or the First District Court of Appeal and at each of the other district courts of appeal. Attendance at an induction ceremony is voluntary.

5-13 Oath of Attorney. Any applicant who chooses not to attend an induction ceremony may take the oath before any resident Circuit Judge or other official authorized to administer oaths, such as a notary public. All applicants must present themselves for administration of the oath not later than 90 days from the date of notification of eligibility for admission by the Clerk of the Supreme Court of Florida.

5-13.1 Filing of the Oath. An executed copy of the Oath of Attorney must be filed with the board. Upon receipt of the oath, the board will certify the applicant and the date of admission to the Supreme Court of Florida and The Florida Bar. The Clerk will maintain a permanent register of all admitted persons.

5-13.2 Certificate of Admission. The Certificate of Admission and a printed reproduction of the Oath of Attorney will be issued without charge when the duly executed oath is received by the board. Additional certificates may be purchased for \$25 each.

5-14 Board Jurisdiction after Admission. If, within 12 months of admission of an applicant to The Florida Bar, the board determines that a material misstatement or material omission in the application process of the applicant may have occurred, the board may conduct an investigation and hold hearings. After investigation and hearings, the board may make Findings and recommendations as to revocation of any license issued to the applicant and will file any Findings with the Supreme Court of Florida for final determination by the court.

5-15 Bar Jurisdiction after Admission. If an applicant is granted admission by the court under a Consent Agreement, then the terms and conditions of his or her admission will be administered by The Florida Bar. The board must provide The Florida Bar access to all information gathered by the board on a conditionally-admitted applicant, except information received by the board under a specific agreement of confidentiality or otherwise restricted by law. Conditional admission is limited to persons who will live in Florida, who will be engaged in the practice of law primarily in Florida, and who will be monitored in Florida during the entire period of conditional admission. If the applicant fails to abide by the terms and conditions of admission, including the requirement of living in Florida, The Florida Bar is authorized to institute proceedings consistent with the Rules Regulating The Florida Bar as to revocation of the license issued to the applicant under the Consent Agreement. The board must be notified of any disciplinary proceedings and have access to all information relating to the administration of a conditional admission, except information received by The Florida Bar under a specific agreement of confidentiality or otherwise restricted by law.

Tab 3

Per Curiam Opinion from Eleventh Circuit Court of Appeals,
Laura M. Watson v. Florida Judicial Qualifications Commission, et al.;
Nos. 14-11021; 14-11675
Issued July 1, 2015

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 14-11021; 14-11675
Non-Argument Calendar

D.C. Docket No. 0:14-cv-60306-MGC

LAURA M. WATSON,

Plaintiff-Appellant,

versus

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
RUBEN V. CHAVEZ,
Co-Special Counsel to the Florida Judicial Qualifications
Commission, in individual and official capacities,
MAYANNE DOWNS,
Member of the Hearing Panel of the Florida Judicial
Qualifications Commission, in individual and official capacities,
KERRY I. EVANDER,
Chair of the Hearing Panel of the Florida Judicial Qualifications
Commission, in individual and official capacities,
THOMAS B. FREEMAN, Member of the Investigative Panel of
the Florida Judicial Qualifications Commission, in individual and official
capacities,
et al.,

Defendants-Appellees.

Appeals from the United States District Court
for the Southern District of Florida

(July 1, 2015)

Before MARTIN, JULIE CARNES, and ANDERSON, Circuit Judges.

PER CURIAM:

Laura M. Watson, proceeding *pro se*, appeals the district court's denial of her motion for a temporary restraining order, a preliminary injunction, and a permanent injunction, pursuant to Federal Rule of Civil Procedure 65, in addition to its *sua sponte* dismissal of her complaint raising a claim for declaratory judgment under 28 U.S.C. § 2201, claims of procedural and substantive due process violations under 42 U.S.C. § 1983, state law claims of malicious prosecution and abuse of process, and a request for injunctive relief. Watson argues that the district court abused its discretion by applying *Younger*¹ abstention to her motion and complaint. The appellees argue that Watson's claims for monetary damages were barred by Eleventh Amendment immunity.

I.

We review the district court's decision to apply *Younger* abstention for an abuse of discretion. *Hughes v. Att'y Gen. of Fla.*, 377 F.3d 1258, 1262 (11th Cir.

¹ *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971).

2004). A district court abuses its discretion if it applies an inappropriate legal standard or fails to follow proper procedures. *Id.* We review the denial of a preliminary injunction and a permanent injunction for an abuse of discretion. *Horton v. City of St. Augustine*, 272 F.3d 1318, 1326 (11th Cir. 2001) (preliminary injunction); *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1349 (11th Cir. 2009) (permanent injunction). Ordinarily, we lack jurisdiction to review the denial of a temporary restraining order unless the appellant can show that irreparable harm will result and that the denial can only be effectually challenged by an immediate appeal. *Ingram v. Ault*, 50 F.3d 898, 899-900 (11th Cir. 1995).

Younger abstention is applicable to noncriminal judicial proceedings that vindicate important state interests or are necessary for the state's judicial system to function. *31 Foster Children v. Bush*, 329 F.3d 1255, 1274 (11th Cir. 2003).

Younger abstention should only be applied when the federal proceeding will intrude on an ongoing state criminal proceeding, a civil enforcement proceeding akin to a criminal prosecution, or a civil proceeding involving an order that uniquely furthers the state's ability to perform judicial functions. *Sprint Commc'ns, Inc. v. Jacobs*, 134 S.Ct. 584, 591-92, 187 L.Ed.2d 505 (2013). Civil enforcement actions akin to criminal prosecutions generally are initiated to sanction the federal plaintiff for a wrongful act. *Id.* at 592. A state actor often will initiate the action and act as a party. *Id.* These civil enforcement actions often

involve a formal investigation and a complaint filed at the end of the investigation.
Id.

For *Younger* abstention to apply, state judicial proceedings must be ongoing, the proceedings must implicate important state interests, and the federal plaintiff must have an adequate opportunity to raise constitutional challenges in the state proceedings. *31 Foster Children*, 329 F.3d at 1274. The first factor is met when a state proceeding is ongoing and the relief sought by the plaintiff would interfere with the state proceeding. *Id.* at 1275-76. The plaintiff's requested relief can interfere with the state proceeding if it would disrupt the normal course of action in the state proceeding, even if the relief sought would not terminate an ongoing proceeding. *Id.* at 1276.

If the first two factors for *Younger* abstention are met, the plaintiff has the burden to show that the state proceeding will not provide him an adequate remedy for his federal claim. *Id.* at 1279. "A federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Id.* (internal quotation omitted). A plaintiff has an adequate remedy for his constitutional claim, for purposes of *Younger* abstention, if he can raise his constitutional claim during the state court's review of an administrative proceeding. *Ohio Civil Rights Comm'n v. Dayton Christian Sch, Inc.*, 477 U.S. 619, 629, 106 S.Ct. 2718, 2724, 91 L.Ed.2d 512 (1986).

Exceptions to *Younger* abstention include bad faith, harassment, or a patently invalid state statute. *Redner v. Citrus Cnty.*, 919 F.2d 646, 649 (11th Cir. 1990). A proceeding is initiated in bad faith if it is brought without a reasonable expectation of obtaining a valid conviction. *Id.* at 650. A state statute may cause irreparable injury, justifying an exception to *Younger* abstention, when it flagrantly and patently violates express constitutional prohibitions. *Hughes*, 377 F.3d at 1264. Otherwise, extraordinary circumstances may justify an exception to *Younger* abstention when the state court cannot fairly and fully adjudicate the constitutional issues and the plaintiff presents “an extraordinarily pressing need for immediate federal equitable relief.” *Kugler v. Helfant*, 421 U.S. 117, 124-25, 95 S.Ct. 1524, 1531, 44 L.Ed.2d 15 (1975).

As an initial matter, we lack jurisdiction to consider her claim that the temporary restraining order should have been granted. *Ingram*, 50 F.3d at 899-900. Further, we find that the district court did not abuse its discretion by applying *Younger* abstention to Watson’s motion. The district court correctly determined that this proceeding by the Florida Judicial Qualifications Commission (“FJQC”) was a civil proceeding akin to a criminal prosecution because it sought to punish Watson for alleged unethical actions, and it was initiated and prosecuted by a state actor. *Sprint Commc’ns*, 134 S.Ct. at 592. Watson does not challenge Florida’s interest in preserving the quality of its judiciary, and thus we conclude the FJQC

proceeding furthers an important state interest. Watson also admitted that the FJQC proceeding was ongoing at the time of her complaint and motion, and she did not demonstrate that the FJQC proceeding would not allow Watson to raise her constitutional claims. *31 Foster Children*, 329 F.3d at 1274, 1279. Finally, Watson did not demonstrate that any of the exceptions to *Younger* abstention applied, nor did she show that extraordinary circumstances existed in her case. Therefore, the district court did not abuse its discretion in exercising *Younger* abstention and denying her motion for injunctive relief. *Hughes*, 377 F.3d at 1262.

II.

Younger abstention applies to claims for injunctive relief, as well as claims for declaratory judgment that would effectively enjoin state proceedings. *Old Republic Union Ins. Co. v. Tillis Trucking Co.*, 124 F.3d 1258, 1261 (11th Cir. 1997). If *Younger* abstention applies to a claim for monetary damages, the Supreme Court has concluded that a district court can only stay that claim if it cannot be redressed in the state proceeding, and it has no discretion to dismiss those claims. *Deakins v. Monaghan*, 484 U.S. 193, 202, 108 S.Ct. 523, 529, 98 L.Ed.2d 529 (1988).

The district court did not abuse its discretion by dismissing Watson's claims for injunctive and declaratory relief, as her request for a declaratory judgment would have effectively enjoined the FJQC proceeding by declaring its application

of the Florida Constitution unconstitutional. *Old Republic*, 124 F.3d at 1261. We have indicated that *Younger* abstention may apply to § 1983 claims raising constitutional challenges relating to an ongoing state proceeding. *See Doby*, 758 F.2d at 1405-06. Nevertheless, the district court lacked discretion to dismiss Watson's claims for monetary damages under the *Younger* doctrine because they cannot be brought in the FJQC proceeding or the Florida Supreme Court's review of that proceeding. *Deakins*, 484 U.S. at 202, 108 S.Ct. at 529; *see also* Fla. Const. art. V, § 12(a)(1), (c)(1) (granting the FJQC the power to investigate judges and to recommend discipline against a judge, and granting the Florida Supreme Court the power to review the recommendation and institute discipline).

III.

We review an issue concerning Eleventh Amendment immunity *de novo*. *Abusaid v. Hillsborough Cnty. Bd. of Cnty. Comm'rs*, 405 F.3d 1298, 1303 (11th Cir. 2005). Generally, we will not consider an issue raised for the first time on appeal. *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004). However, Eleventh Amendment immunity is a jurisdictional question that may be raised for the first time on appeal. *Doe v. Moore*, 410 F.3d 1337, 1349 (11th Cir. 2005).

Eleventh Amendment immunity prevents a plaintiff from suing an unconsenting state in federal court. *Id.* It also bars suits against an arm of the

state. *Manders v. Lee*, 338 F.3d 1304, 1308 (11th Cir. 2003) (*en banc*). A state official sued in his official capacity is also immune from suit, but the Eleventh Amendment does not shield a state official sued in his individual capacity.

Jackson v. Ga. Dep't of Transp., 16 F.3d 1573, 1575 (11th Cir. 1994). Because Watson brought her claims against FJQC officials in their individual capacities, the Eleventh Amendment does not immunize them from suit. Id.

Accordingly, we affirm the district court's denial of Watson's motion for a temporary restraining order, preliminary injunction, and permanent injunction. We also affirm its dismissal of Watson's claims for declaratory and injunctive relief. We reverse the district court's dismissal of Watson's claims against FJQC officials in their individual capacities for violations of § 1983, malicious prosecution, abuse of process, and punitive damages, and we remand the case. The district court can only issue a stay in the proceedings until the resolution of Watson's FJQC proceeding in the Florida Supreme Court. This appeal is AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings consistent with this opinion.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.²

² The parties' pending motions to supplement the record on appeal are DENIED.